

Final Version of Charge~~DRAFT (2) – Reflecting Charge Conference and Consideration of Subsequent Submissions~~

United States v. Bonventre et al., 10 cr. 228

JURY INSTRUCTIONS

Ladies and gentlemen, I now am going to instruct you on the law, before you begin your deliberations. You must pay close attention and I will be as clear as possible.

It has been obvious to me and to counsel that you have faithfully discharged your duty to listen carefully and observe each witness who testified. Your interest has never flagged, and you have followed the testimony with close attention.

I ask you to give me that same careful attention as I instruct you on the law.

The following instructions are rather extensive, so let me provide you with a brief overview of what to expect. I'll begin by instructing you on very important rules that are generally applicable to all criminal jury trials. Then, I will

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1 proceed to review the counts which are charged in the Indictment and instruct you
2 on the specific rules of law that you will have to consider in deciding each count.
3 Finally, I will instruct you on the procedures you should follow while conducting
4 your deliberations.

5
6
7 **ROLE OF THE COURT**

8 You have now heard all of the evidence in the case as well as the final
9 arguments of the lawyers for the Government and for the Defendants.

10
11 My duty at this point is to instruct you as to the law. It is your duty to
12 accept these instructions of law and apply them to the facts as you determine them,
13 just as it has been my duty to preside over the trial and decide what testimony and
14 evidence is relevant under the law for your consideration.

15
16 On these legal matters, you must take the law as I give it to you. If
17 any attorney has stated a legal principle different from any that I state to you in my
18 instructions, it is my instructions that you must follow.

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1 You should not single out any instruction as alone stating the law, but
2 you should consider my instructions as a whole when you retire to deliberate in the
3 jury room.

4
5 You should not, any of you, be concerned about the wisdom of any
6 rule that I state. Regardless of any opinion that you may have as to what the law
7 may be – or ought to be – it would violate your sworn duty to base a verdict upon
8 any other view of the law than that which I give you.

9
10
11 **ROLE OF THE JURY**

12 As members of the jury, you are the sole and exclusive judges of the
13 facts. You pass upon the evidence. You determine the credibility of the witnesses.
14 You resolve such conflicts as there may be in the testimony. You draw whatever
15 reasonable inferences you decide to draw from the facts as you have determined
16 them, and you determine the weight of the evidence.

17
18 In determining these issues, no one may invade your province or

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1 function as jurors. In order for you to determine the facts, you must rely upon your
2 own recollection of the evidence. What the lawyers have said in their opening
3 statements, in their closing arguments, in the objections, or in their questions is not
4 evidence. Nor is what I may have said – or what I may say in these instructions –
5 about a fact issue, evidence. In this connection, you should bear in mind that a
6 question put to a witness is never evidence; it is only the answer which is evidence.
7 But you may not consider any answer that I directed you to disregard or that I
8 directed struck from the record. Do not consider such answers.

9
10 Since you are the sole and exclusive judges of the facts, I do not mean
11 to indicate any opinion as to the facts or what your verdict should be. The rulings I
12 have made during the trial are not any indication of my views of what your
13 decision should be as to whether or not the Government has proven its case.

14
15 You are to understand that the Court has no opinion as to the verdict
16 you should render in this case.

17
18 As to the facts, ladies and gentlemen, you are the exclusive judges.

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1 You are to perform the duty of finding the facts without bias or prejudice for or
2 against any party.

3
4
5 **JUROR OATH**

6 In determining the facts, you are reminded that you took an oath to
7 render judgment impartially and fairly, without prejudice or sympathy and without
8 fear, solely upon the evidence in the case and the applicable law. I know that you
9 will do this and reach a just and true verdict.

10
11
12 **JURY TO DISREGARD COURT'S VIEW**

13 I have not expressed, nor have I intended to intimate, any opinion as
14 to which witnesses are or are not worthy of belief, what facts are or are not
15 established, or what inference or inferences should be drawn from the evidence. If
16 any expression of mine has seemed to indicate an opinion relating to any of these
17 matters, I instruct you to disregard it. You are, I repeat, the exclusive, sole judges
18 of all of the questions of fact submitted to you and of the credibility of the

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1 witnesses. Your authority, however, is not to be exercised arbitrarily; it must be
2 exercised with sincere judgment, sound discretion, and in accordance with the rules
3 of law that I give you. In making your determination of the facts in this case, your
4 judgment must be applied only to that which is properly in evidence. Arguments
5 of counsel are not in evidence, although you may give consideration to those
6 arguments in making up your mind on what inferences to draw from the facts
7 which are in evidence.

8
9 From time to time the Court has been called upon to pass upon the
10 admissibility of certain evidence. I have tried to do so, in so far as it was
11 practicable, out of your hearing. The reasons for any such rulings are not your
12 concern and you are not to draw any inferences from them. Whether evidence is
13 admissible is purely a question of law in the province of the Court and outside the
14 province of the jury. In admitting evidence to which objection has been made, the
15 Court does not determine what weight should be given to such evidence, nor does
16 it pass on the credibility of the evidence. Of course, you will dismiss from your
17 mind completely, entirely, any evidence which has been ruled out of the case by
18 the Court, and you must refrain from speculation or conjecture or any guesswork

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1 about the nature or effect of any discussion between Court and counsel held out of
2 your hearing or sight.

3
4
5 **CONDUCT OF COUNSEL**

6 It is the duty of the attorney for each party in the case to object when
7 the other side offers testimony or other evidence which the attorney believes is not
8 properly admissible. Counsel also have the right and duty to ask the Court to make
9 rulings of law and to request conferences out of the hearing of the jury. All those
10 questions of law must be decided by me, the Court. You should not show any
11 prejudice against an attorney or the party the attorney represents because the
12 attorney objected to the admissibility of evidence, or asked for a conference out of
13 the hearing of the jury, or asked the Court for a ruling on the law.

14
15 As I have already indicated, my rulings on the admissibility of
16 evidence do not, unless expressly stated by me, indicate any opinion on my part as
17 to the weight or effect of such evidence. You are the sole judges of the credibility
18 of all witnesses and the weight and effect of all evidence.

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1 Your verdict should be based on the facts as found by you from the
2 evidence and the law as instructed by the Court.

3
4
5 **REMARKS TO COUNSEL**

6 It is the duty of the attorneys to offer evidence and press objections on
7 behalf of their side. It is my function to cut off counsel from an improper line of
8 argument or questioning, to strike offending remarks and to reprimand counsel
9 when I think it is necessary. But you should draw no inference from that. It is
10 irrelevant whether you like a lawyer or whether you believe I like a lawyer.

11
12 I would like to express my gratitude to each of the attorneys for their
13 conscientious efforts and for work well done.

14
15
16 **PRESUMPTION OF INNOCENCE & BURDEN OF PROOF**

17 Each of the Defendants has pleaded not guilty to the Indictment,
18 which contains the charges for which he or she is now on trial.

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1 As a result of each Defendant's plea of not guilty, the burden is on the
2 prosecution, which I refer to in this Charge as the Government, to prove
3 individually each of the Defendants guilty beyond a reasonable doubt. This burden
4 never shifts to a defendant for the simple reason that the law never imposes upon a
5 defendant in a criminal case the burden or duty of calling any witness or producing
6 any evidence.

7
8 The law presumes each of the individual Defendants to be innocent of
9 all **of** the charges against him or her. I therefore instruct you that each Defendant
10 is to be presumed by you to be innocent throughout your deliberations until such
11 time, if ever, you as a jury are satisfied that the Government has proven that
12 individual Defendant guilty beyond a reasonable doubt.

13
14 Each of the Defendants begins the trial here with a clean slate. This
15 presumption of innocence alone is sufficient to acquit a Defendant unless you as
16 jurors are, unanimously, convinced beyond a reasonable doubt of that Defendant's
17 guilt, after a careful and impartial consideration of all of the evidence in this case.
18 If the Government fails to sustain its burden as to any Defendant you are

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1 considering, you must find that Defendant not guilty.

2
3 This presumption was with each Defendant when the trial began and
4 remains with each Defendant even now, as I speak to you, and will continue with
5 each Defendant into your deliberations unless and until you are convinced that the
6 Government has proven that Defendant guilty beyond a reasonable doubt.

7
8
9 **REASONABLE DOUBT**

10 I have said that the Government must prove each Defendant guilty
11 beyond a reasonable doubt. The question naturally is: what is a reasonable doubt?
12 The words almost define themselves. It is a doubt based upon reason and common
13 sense. It is a doubt that a reasonable person has after carefully weighing all of the
14 evidence. It is a doubt that would cause a reasonable person to hesitate to act in a
15 matter of importance in his or her personal life. Proof beyond a reasonable doubt
16 must, therefore, be proof of such a convincing character that a reasonable person
17 would not hesitate to rely and act upon it in the most important of his or her own
18 affairs. A reasonable doubt is not a caprice or whim; it is not speculation or

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1 suspicion. It is not an excuse to avoid the performance of an unpleasant duty. And
2 it is not sympathy.

3
4 In a criminal case, the burden is at all times upon the Government to
5 prove guilt beyond a reasonable doubt. The law does not require that the
6 Government prove guilt beyond all possible doubt; proof beyond a reasonable
7 doubt is sufficient to convict. This burden never shifts to any Defendant, which
8 means that it is always the Government's burden to prove each of the elements of
9 each of the crimes charged against each of the Defendants beyond a reasonable
10 doubt.

11
12 If, after fair and impartial consideration of all of the evidence, you
13 have a reasonable doubt as to the guilt of an individual Defendant, it is your duty to
14 acquit that Defendant of the charge you are considering. On the other hand, if after
15 fair and impartial consideration of all the evidence, you are satisfied of that
16 Defendant's guilt beyond a reasonable doubt, it is your duty to convict on that
17 charge.

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THE GOVERNMENT AS A PARTY

You are to perform the duty of finding the facts without bias or prejudice as to any party. You are to perform this duty in an attitude of complete fairness and impartiality.

This case is important to the Government, for the enforcement of criminal laws is a matter of prime concern to the community. Equally, it is important to each of the Defendants, who have pleaded not guilty to serious criminal charges.

The fact that the prosecution is brought in the name of the United States of America entitles the Government to no greater consideration than that accorded to any other party to a litigation. By the same token, it is entitled to no less consideration. All parties, whether government or individuals, stand as equals at the bar of justice.

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WHAT IS AND IS NOT EVIDENCE

The evidence in this case is the sworn testimony of the witnesses, the exhibits received in evidence and the stipulations agreed to by the parties.

By contrast, the question of a lawyer is not to be considered by you as evidence. It is the witnesses' answers that are evidence, not the questions. At times, a lawyer on cross-examination may have incorporated into a question a statement which assumed certain facts to be true, and asked the witness if the statement was true. If the witness denied the truth of a statement, and if there is no direct evidence in the record proving that assumed fact to be true, then you may not consider it to be true simply because it was contained in the lawyer's question.

An example of this is a lawyer's question of a witness: "When did you stop drinking excessively?" You would not be permitted to consider as true the assumed fact that the witness had ever been drinking excessively unless the witness herself indicated that she had, or unless there was some other evidence in the record that the witness had been drinking excessively.

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1 Testimony that has been stricken or excluded is not evidence and may
2 not be considered by you in rendering your verdict. Also, if certain testimony was
3 received for a limited purpose – such as for the purpose of assessing a witness’s
4 credibility, or as against a particular Defendant only – you must follow any
5 limiting instructions I have given.

6
7 Arguments by lawyers are not evidence, because the lawyers are not
8 witnesses. What they have said to you in their opening statements and in their
9 summations is intended to help you understand the evidence to reach your verdict.
10 However, if your recollection of the facts differs from the lawyers’ statements, it is
11 your recollection which controls.

12
13 To constitute evidence, exhibits must be received in evidence.
14 Exhibits which have been marked for identification may not be considered by you
15 as evidence until and unless they have been received in evidence by the Court.

16
17 Materials brought forth only to refresh a witness’s recollection are not
18 evidence.

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1 Finally, statements that I may have made concerning the quality of the
2 evidence do not constitute evidence. It is for you alone to decide the weight, if
3 any, to be given to the testimony you have heard and the exhibits you have seen.
4

5 To follow up on a statement I made a moment ago, during the trial, I
6 admitted certain evidence against only one Defendant. You must consider this
7 evidence only against the Defendant in question. You must not consider the
8 evidence in the case against any other Defendant. Each Defendant is entitled to
9 have his or her case decided just on the evidence which applies to him or her.
10

11 Likewise, when I have admitted certain evidence only for a particular
12 purpose and not generally, you may give this evidence the weight you feel it
13 deserves for the limited purpose for which the evidence was received. You may
14 not use this evidence for any other purpose not specifically mentioned.
15
16

17 **DIRECT AND CIRCUMSTANTIAL EVIDENCE**

18 There are two types of evidence which you may properly use in

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1 reaching your verdict.

2
3 One type of evidence is direct evidence. Direct evidence is testimony
4 about something the witness knows by virtue of his or her own senses – something
5 he or she has seen, felt, touched, or heard. Direct evidence may also be in the form
6 of an exhibit, where the fact to be proved is embodied in a document or other
7 object.

8
9 Circumstantial evidence is evidence that tends to prove a disputed fact
10 by proof of other facts. Here is a simple example of circumstantial evidence.
11 Assume that, when you came into the courthouse this morning, it was a nice day.
12 Assume that the courtroom blinds were drawn and you could not look outside. As
13 you were sitting here, someone walked in with a wet coat and hat. Then, a few
14 minutes later, another person entered with a wet umbrella. Now, you cannot look
15 outside of the courtroom and you cannot see whether or not it is raining. So you
16 have no direct evidence of that fact. But on the combination of facts which I have
17 asked you to assume, it would be reasonable and logical for you to conclude that it
18 had begun to rain.

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1
2 That is all there is to circumstantial evidence. You infer on the basis
3 of reason and experience and common sense, from one established fact, the
4 existence or non-existence of some other fact.

5
6 Circumstantial evidence is of no less value than direct evidence. It is
7 a general rule that the law makes no distinction between direct evidence and
8 circumstantial evidence.

9
10
11 **INFERENCE DEFINED**

12 You have heard the term “infer,” and in their arguments the attorneys
13 may have asked you to infer, on the basis of your reason, experience, and common
14 sense, from one or more established facts, the existence of some other fact.

15
16 An inference is not a suspicion or a guess. It is a reasoned, logical
17 conclusion that a disputed fact exists on the basis of another fact which has been
18 shown to exist.

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1 There are times when different inferences may be drawn from facts,
2 whether proved by direct or circumstantial evidence. The Government may ask
3 you to draw one set of inferences, while the defense may ask you to draw another.
4 It is for you, and you alone, to decide what inferences you will draw.

5
6 The process of drawing inferences from facts in evidence is not a
7 matter of guesswork or speculation. An inference is a deduction or conclusion that
8 you, the jury, are permitted to draw – but are not required to draw – from the facts
9 which have been established by either direct or circumstantial evidence. In
10 drawing inferences, you should exercise your common sense.

11
12 So, while you are considering the evidence presented to you, you are
13 permitted to draw, from the facts which you find to be proven, such reasonable
14 inferences as would be justified in light of your experience.

15
16
17 **WITNESS CREDIBILITY**

18 You have had the opportunity to observe all the witnesses. It is now

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1 your job to decide how believable each witness was in his or her testimony. You
2 are the sole judges of the credibility of each witness and of the importance of his or
3 her testimony.

4
5 It must be clear to you by now that you are being called upon to
6 resolve various factual issues raised by the parties in the face of very different
7 pictures painted by the Government and by the various Defendants. In making
8 these judgments, you should carefully scrutinize all of the testimony of each
9 witness, the circumstances under which each witness testified, and any other matter
10 in evidence which may help you decide the truth and the importance of each
11 witness's testimony.

12
13 How do you determine where the truth lies? You watched the
14 witnesses testify. Everything a witness said or did on the witness stand counts in
15 your determination. How did the witness impress you? Did he or she appear to be
16 frank, forthright and candid, or evasive and edgy as if hiding something? How did
17 the witness appear; what was his or her demeanor – that is, the person's carriage,
18 behavior, bearing, manner and appearance while testifying? Often it is not what a

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1 person says but how he or she says it that moves us.

2
3 You should use all the tests for truthfulness that you would use in
4 determining matters of importance to you in your everyday life. You should
5 consider any bias or hostility the witness may have shown for or against any party
6 as well as any interest the witness has in the outcome of the case. You should
7 consider the opportunity the witness had to see, hear, and know the things about
8 which he or she testified, the accuracy of the witness's memory, the witness's
9 candor or lack of candor, the witness's intelligence, the reasonableness and
10 probability of his or her testimony and its consistency or lack of consistency, and
11 its corroboration or lack of corroboration with other credible testimony.

12
13 If you find that a witness has testified falsely as to any material fact or
14 if you find that a witness has been previously untruthful when testifying under oath
15 or otherwise, you may reject that witness's testimony in its entirety or you may
16 accept only those parts that you believe to be truthful or that are corroborated by
17 other independent evidence in the case.

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1 There has been evidence that a witness who testified at this trial lied
2 under oath at another proceeding. I must warn you that the testimony of this
3 witness should be viewed cautiously and weighed with great care. It is, however,
4 for you to decide how much of his testimony, if any, you wish to believe.

5
6 It is for you, the jury, and for you alone, not the lawyers, or the
7 witnesses, or me as the judge, to decide the credibility of witnesses who appeared
8 here and the weight that their testimony deserves.

9
10 What you must try to do in deciding credibility is to size a witness up
11 in light of the witnesses's demeanor, the explanations given and all of the other
12 evidence in the case. Always remember that you should use your common sense,
13 your good judgment and your own life experience.

14
15
16 **BIAS**

17 In deciding whether to believe a witness, you should specifically note
18 any evidence of hostility or affection which the witness may have towards one of

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1 the parties. Likewise, you should consider evidence of any other interest or motive
2 that the witness may have in cooperating with a particular party.

3
4 It is your duty to consider whether the witness has permitted any such
5 bias or interest to color his or her testimony. In short, if you find that a witness is
6 biased, you should view his or her testimony with caution, weigh it with care and
7 subject it to close and searching scrutiny.

8
9
10 **DISCREPANCIES IN TESTIMONY**

11 You may have heard evidence of discrepancies in the testimony of
12 certain witnesses, and counsel may have argued that such discrepancies are a
13 reason for you to reject the testimony of those witnesses.

14
15 You are instructed that evidence of discrepancies may be a basis to
16 disbelieve a witness's testimony. On the other hand, discrepancies in a witness's
17 testimony or between his testimony and that of others do not necessarily mean that
18 the witness's entire testimony should be discredited.

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1 People sometimes forget things and even a truthful witness may be
2 nervous and contradict him or herself. It is also a fact that two people witnessing
3 an event may see or hear it differently. Whether a discrepancy pertains to a fact of
4 importance or only to a trivial detail should be considered in weighing its
5 significance; but a willful falsehood always is a matter of importance and should
6 be considered seriously.

7
8 It is for you to decide, based on your total impression of the witness,
9 how to weigh the discrepancies in his or her testimony. You should, as always, use
10 common sense and your own good judgment.

11
12
13 **IMPEACHMENT BY PRIOR INCONSISTENT STATEMENTS**

14 You have heard evidence that at some earlier time a witness has said
15 or done something which counsel argues is inconsistent with the witness's trial
16 testimony.

17
18 Evidence of a prior inconsistent statement is not to be considered by

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1 you as affirmative evidence in determining whether the criminal charges in this
2 case have been proven or not. Evidence of a prior inconsistent statement was
3 placed before you for the more limited purpose of helping you decide whether to
4 believe the trial testimony of the witness who contradicted himself or herself. If
5 you find that the witness made an earlier statement that conflicts with his or her
6 trial testimony, you may consider that fact in deciding how much of his or her trial
7 testimony, if any, to believe.

8
9 In making this determination, you may consider whether the witness
10 purposely made a false statement or whether it was an innocent mistake; whether
11 the inconsistency concerns an important fact, or whether it had to do with a small
12 detail; whether the witness had an explanation for the inconsistency, and whether
13 that explanation appealed to your common sense.

14
15 It is exclusively your duty, based upon all the evidence and your own
16 good judgment, to determine whether the prior statement was inconsistent, and if
17 so how much, if any, weight to give to the inconsistent statement in determining
18 whether to believe all or part of the witness's testimony.

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EVIDENCE OF MOTIVE

You have heard evidence about the Defendants' motives for committing the crimes charged. Proof of motive is not a necessary element of the crimes with which the Defendants are charged. Proof of motive does not establish guilt, nor does lack of motive establish that a Defendant is innocent.

If the guilt of the Defendant that you are considering is shown beyond a reasonable doubt, it is immaterial what the motive for the crimes may be, but the presence or absence of motive is a circumstance which you may consider as bearing on the intent of the Defendant that you are considering.

ACCOMPLICE/COOPERATING WITNESS TESTIMONY

You have heard from witnesses who testified that they were actually involved in carrying out aspects of the crimes charged in the Indictment. There has been a great deal said about these so-called accomplice or cooperating witnesses in

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1 the summations of counsel and about whether you should believe them. The
2 Government argues, as it is entitled to do, that it frequently must rely on the
3 testimony of witnesses who admit to participating in the alleged crimes at issue. It
4 argues that it must take its witnesses as it finds them and frequently must use such
5 testimony in a criminal prosecution, because otherwise it would be difficult or
6 impossible to detect and prosecute wrongdoers. For these very reasons, the law
7 allows the use of such testimony.

8
9 Indeed, it is the law in federal courts that the testimony of an
10 accomplice may be enough in itself for conviction, if the jury believes that the
11 testimony establishes guilt beyond a reasonable doubt. That said, because of the
12 possible interest an accomplice or a cooperating witness may have in testifying,
13 such a witness's testimony should be scrutinized with special care and particular
14 caution in deciding how much, if any, of the cooperating witness's testimony to
15 believe.

16
17 Whether a witness has admitted to committing a crime, can be
18 considered by you as bearing upon his or her credibility. It does not follow,

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1 however, that simply because a person has admitted to participating in one or more
2 crimes, he or she is incapable of telling the truth about what happened or did not
3 happen.

4
5 The testimony of an accomplice or a cooperating witness should be
6 given such weight as it deserves in light of the particular facts and circumstances
7 before you, taking into account the witness's demeanor and candor, the strength
8 and accuracy of his or her recollection, his or her background, the extent to which
9 his or her testimony is or is not corroborated by other evidence in the case, and his
10 or her motive or reasons for testifying and cooperating with the Government.

11
12 You may consider whether an accomplice or cooperating witness has
13 an interest in the outcome of the case, or had any other incentive to fabricate, and if
14 so, whether it influenced his or her testimony. You have heard testimony about
15 agreements between the Government and the accomplice or cooperating witnesses.
16 I caution you that it is not your concern why the Government made an agreement
17 with a witness. Your sole concern is whether a witness has given truthful
18 testimony here in this courtroom before you. You may, however, consider in this

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1 connection the provisions of the cooperation agreement between a witness and the
2 Government in making your determination as to whether the witness has given
3 truthful trial testimony.
4

5 The cooperation agreements that have been admitted into evidence
6 require the witnesses to, among other things, testify truthfully. They also provide
7 that, if the Government determines that the witness has abided by the terms of the
8 cooperation agreement and has provided substantial assistance in an investigation
9 or prosecution of another person, the Government will file a so-called “5K1.1”
10 letter. Section 5.K.1.1 of the United States Sentencing Guidelines authorizes a
11 court to depart downward from the Sentencing Guidelines when sentencing the
12 cooperating witness, upon a motion by the Government stating that the witness has
13 “provided substantial assistance in the investigation or prosecution of another
14 person who has committed an offense.”
15

16 In evaluating the testimony of cooperating witnesses, you should ask
17 yourselves whether these accomplices would benefit more by lying, or by telling
18 the truth. Was their testimony made up in any way because they believed or hoped

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1 that they would somehow receive favorable treatment by testifying falsely? Or did
2 they believe that their interests would be best served by testifying truthfully? If
3 you believe that the witness was motivated by hopes of personal gain, was the
4 motivation one that would cause the witness to lie, or was it one that would cause
5 him to tell the truth? Did this motivation color the witness's testimony?

6
7 If you find that the testimony was false, you should reject it. If,
8 however, after a cautious and careful examination of an accomplice or a
9 cooperating witness's testimony and demeanor on the witness stand, you are
10 satisfied that the witness told the truth, you should accept the testimony as credible
11 and act upon it accordingly.

12
13 As with any witness, the issue of credibility need not be decided in an
14 all-or-nothing fashion. Even if you find that a witness testified falsely in one part,
15 you still may accept his or her testimony in other parts, or you may disregard all of
16 it. This is a determination that is entirely for you, the jury.

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ACCOMPLICE/COOPERATING WITNESS TESTIMONY-GUILTY PLEA

You have heard testimony from Government witnesses who have pleaded guilty to charges arising in part out of some of the same facts that are at issue in this case. You are instructed, however, that you are to draw no conclusions or inferences of any kind about the guilt of any individual Defendant merely from the fact that a prosecution witness pleaded guilty to charges that may be similar.

The decision of that witness to plead guilty was a personal decision that witness made about that witness's own guilt. It may not be used by you in any way as evidence against or unfavorable to any of the Defendants on trial here.

You may not infer that a particular Defendant was guilty of participating in criminal conduct merely from the fact that he or she associated with other people who were guilty of wrongdoing.

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CHARACTER TESTIMONY

Some Defendants have called witnesses who have given their opinion of the good character of the Defendants. This testimony is not to be taken by you as the witness's opinion as to whether a particular Defendant is guilty or not guilty. That question is for you alone to determine. You should, however, consider this character evidence together with all the other facts and all the other evidence in the case in determining whether a particular Defendant is guilty or not guilty of the charges against that Defendant.

Accordingly if, after considering all the evidence including testimony about a Defendant's good character, you find a reasonable doubt has been created, you must acquit him or her of all the charges.

On the other hand, if after considering all the evidence including that of a Defendant's character, you are satisfied beyond a reasonable doubt that the Defendant you are considering is guilty, you should not acquit the Defendant merely because you believe that Defendant to be a person of good character.

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UNCALLED WITNESS - EQUALLY AVAILABLE TO BOTH SIDES

There are persons whose names you have heard during the course of the trial but who did not appear here to testify, and one or more of the attorneys has referred to their absence from the trial. I instruct you that every party had an equal opportunity or lack of opportunity to call any of these witnesses.

You should not draw any inferences or reach any conclusions as to what they would have testified to had they been called. Their absence should not affect your judgment in any way. You should, however, remember my instruction that no defendant in a criminal case has a burden or duty of calling any witness or producing any evidence. You should remember that there is no duty on either side to call a witness whose testimony would be merely cumulative of testimony already in evidence, or who would merely provide additional testimony to facts already in evidence.

PERSONS NOT ON TRIAL

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1 You may not draw any inference, favorable or unfavorable, towards
2 the Government or the Defendants from the fact that any person other than the
3 Defendants is not on trial here. You also may not speculate as to the reasons why
4 other persons are not on trial. Those matters are wholly outside your concern and
5 have no bearing on your function as jurors.

6
7 You may also not draw any inference, favorable or unfavorable,
8 toward the Government or the Defendants from the fact that certain persons were
9 not named in the Indictment. The fact that these persons were not named in this
10 Indictment must play no part in your deliberations. Whether a person should be
11 named as a coconspirator or indicted as a defendant is a matter within the sole
12 discretion of the United States Attorney and the Grand Jury. Therefore, you may
13 not consider it in any way in reaching your verdict as to the Defendants on trial.

14
15
16 **PARTICULAR INVESTIGATIVE TECHNIQUES NOT REQUIRED**

17 You have heard reference to the fact that certain investigative
18 techniques were not used by law enforcement authorities. There is no legal

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1 requirement, however, that the Government prove its case through any particular
2 means. The Government is not on trial, and law enforcement techniques are not
3 your concern.

4
5 Your concern is to determine whether or not the Government has
6 proven the guilt of each Defendant beyond a reasonable doubt.

7
8
9 **EXPERT TESTIMONY**

10 You have heard testimony from certain witnesses who were proffered
11 as experts in different areas. An expert is allowed to express his or her opinion on
12 those matters about which he or she has specialized knowledge, training and
13 experience. Expert testimony is presented to you on the theory that someone who
14 is experienced in a given field can assist you in understanding the evidence or in
15 reaching an independent decision on the facts.

16
17 In weighing the expert's testimony, you may consider the expert's
18 qualifications, opinions, reasons for testifying, as well as all of the other

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1 considerations that ordinarily apply when you are deciding whether or not to
2 believe a witness's testimony. You may give the expert testimony whatever
3 weight, if any, you find it deserves in light of all the evidence in this case. You
4 should not, however, accept the witness's testimony merely because he or she is an
5 expert. Nor should you substitute it for your own reason, judgment, and common
6 sense. The determination of the facts in this case rests solely with you.

7
8
CHARTS AND SUMMARIES

9
10 Now, some of the exhibits that were admitted into evidence were in
11 the form of charts and summaries. I decided to admit these charts and summaries
12 in place of and, at times, along with the underlying documents that they represent
13 in order to save time and avoid unnecessary inconvenience. You should consider
14 these charts and summaries as you would any other evidence.

15
16 Where I have admitted summaries along with the underlying
17 evidence, I have done so in order to aid you in considering the evidence. The
18 charts themselves are no better than the testimony or documents upon which they

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1 are based, and are not themselves independent evidence. Therefore, you are to
2 give no greater consideration to these charts and summaries than you would give to
3 the evidence upon which they are based.

4
5 It is for you to decide whether the charts or summaries correctly
6 present the information contained in the testimony and in the exhibits on which
7 they were based. You are entitled to consider the charts and summaries if you find
8 they are of assistance to you in analyzing and understanding the evidence.

9
10
11 **STIPULATIONS OF TESTIMONY**

12 In this case you have heard evidence in the form of stipulations of
13 testimony. A stipulation of testimony is an agreement between the parties that, if
14 called as a witness, the person would have given certain testimony. You must
15 accept as true the fact that the witness would have given that testimony. However,
16 it is for you to determine the effect to be given that testimony.

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1
2
3
4
5
6
7
8
STIPULATIONS OF FACT

9 In this case you have also heard evidence in the form of stipulations
10 that contained facts that were agreed to be true. In such instances, you must accept
11 those facts as true.
12

13
14
15
16
17
18
PREPARATION OF WITNESSES

9 You have heard evidence during the trial that witnesses have
10 discussed the facts of the case and their testimony with the lawyers before the
11 witnesses appeared in Court.
12

13 Although you may consider that fact when you are evaluating a
14 witness's credibility, there is nothing either unusual or improper about a witness
15 meeting with lawyers before testifying so that the witness can be aware of the
16 subjects he or she will be questioned about, focus on those subjects and have the
17 opportunity to review relevant exhibits before being questioned about them. Such
18 consultation helps conserve your time and the Court's time. In fact, it would be

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1 unusual for a lawyer to call a witness without such consultation.

2
3 Again, the weight you give to the fact or the nature of the witness's
4 preparation for his or her testimony and what inferences you draw from such
5 preparation are matters completely within your discretion.

6
7
8 **DEFENDANT'S TESTIMONY**

9 A defendant in a criminal case never has any duty to testify or come
10 forward with any evidence. This is because, as I have told you, the burden of proof
11 beyond a reasonable doubt remains on the Government at all times, and the
12 defendant is presumed innocent until and unless you find guilt beyond a reasonable
13 doubt.

14
15 In this case, Defendant Daniel Bonventre [and_____] did testify and
16 was/[were] subject to cross-examination like any other witness. You should
17 examine and evaluate the testimony just as you would the testimony of any other
18 witness with an interest in the outcome of the case.

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[DEFENDANT’S RIGHT NOT TO TESTIFY]

[The Defendant[s] [_____] did not testify in this case. Under our Constitution, a defendant has no obligation to testify or to present any evidence, because it is the Government’s burden to prove each defendant guilty beyond a reasonable doubt. That burden remains with the Government throughout the entire trial and never shifts to any defendant.

A defendant is never required to prove that he or she is innocent. Therefore, you may not attach any significance to the fact that a Defendant did not testify. You may not draw any adverse inference against any Defendant because he or she did not take the witness stand. You may not consider this against a Defendant in any way in your deliberations in the jury room.]

NOT CRIMINAL TO FAIL TO REPORT A CRIME

Furthermore, mere failure to report a felony is not a crime, and there is no general duty to report criminal activity to the authorities.

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ADMISSION OF A DEFENDANT

There has been evidence that certain of the Defendants made statements in which the Government claims that they made admissions relevant to the charges in the Indictment. I instruct you that you are to give the statements such weight as you feel that they deserve in light of all the evidence.

IMPROPER CONSIDERATIONS:
RACE, RELIGION, SEXUAL ORIENTATION, FAMILY STATUS,
NATIONAL ORIGIN, SEX, AGE, ETC.

Your verdict must be based solely upon the evidence developed at trial or the lack of evidence. It would be improper for you to consider, in reaching your decision as to whether the Government sustained its burden of proof, any issues relating to the sexual orientation, same sex or other marriage or domestic partnership status, family status, race, gender, national origin, age or other social or ethnic characteristics of the parties, witnesses and trial participants. The parties in this case are entitled to a trial free from prejudice and our judicial system cannot work unless you reach your verdict through a fair and impartial consideration of

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1 the evidence. It would also be improper for you to allow any feelings you might
2 have about the nature or the notoriety of the crimes charged to interfere with your
3 decision-making process.

4
5
6 **IMPROPER CONSIDERATION: PUNISHMENT**

7 The question of possible punishment of any Defendant is of no
8 concern to the jury and should not, in any sense, enter into or influence your
9 deliberations. The duty of imposing a sentence, if necessary, rests exclusively with
10 the Court. Your function is to weigh the evidence in the case and to determine,
11 solely upon the basis of such evidence, whether or not each Defendant is guilty
12 beyond a reasonable doubt. Under your oath as jurors, you cannot allow a
13 consideration of the punishment that may be imposed upon a Defendant, if he or
14 she is convicted, to influence your verdict in any way or to enter into your
15 deliberations in any sense.

16
17 This concludes the general portion of the Instructions. I now turn to
18 the specific charges against the Defendants and what is required to prove each

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charge.

MULTIPLE COUNTS/MULTIPLE DEFENDANTS

The Indictment in this case contains a total of thirty-~~three~~one counts.

~~You will be asked to render verdicts upon thirty-one of those counts. upon which you will be asked to render verdicts.~~ There are five Defendants on trial before you:

DANIEL BONVENTRE, ANNETTE BONGIORNO, JO ANN CRUPI, JEROME O'HARA AND GEORGE PEREZ.

You must consider each count of the Indictment and each Defendant's involvement, if any, in that count separately, and you must return a separate verdict on each Defendant for each count in which he or she is charged.

The number of counts charged against any particular Defendant is not evidence of the guilt of that individual, and should not influence your decision in any way.

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1 In reaching your verdict, bear in mind that innocence and guilt are
2 personal and individual. You must separately consider the evidence against each
3 individual Defendant on each offense charged, and you must return a separate
4 verdict for each Defendant on each count. For each individual Defendant and each
5 count, you must decide whether the Government has proved beyond a reasonable
6 doubt that the particular Defendant is guilty of the particular offense charged.
7 Your verdict of guilty or not guilty must be based solely upon the evidence.

8
9 The case against each Defendant, on each count, stands or falls upon
10 the proof or lack of proof at trial against that Defendant alone, and your verdict as
11 to any Defendant on any count should not influence your decision as to any other
12 Defendant or any other count.

13
14
15 **THE INDICTMENT**

16 The Defendants, DANIEL BONVENTRE, ANNETTE
17 BONGIORNO, JO ANN CRUPI, JEROME O'HARA, AND GEORGE PEREZ,
18 are formally charged in the Indictment. As I instructed you at the outset of this

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1 case, the Indictment is simply a charge or accusation. It is not evidence.

2
3 The Indictment in this case contains a total of thirty-~~one~~~~one~~ counts
4 upon which you will be asked to render verdicts. Each count charges one or more
5 of the Defendants with a separate crime. Although there are allegations in
6 common to all of the Defendants and the different counts, each individual
7 Defendant and each count must be considered separately. You must return a
8 separate, unanimous verdict as to each individual Defendant on each count ~~on~~
9 ~~which you are asked to render a verdict. under which he or she is charged.~~

10
11 Count One of the Indictment charges all five of the Defendants with
12 knowingly and willfully conspiring: to commit securities fraud; to fail to make and
13 keep the records required of a registered broker-dealer; to fail to make and keep the
14 records required of an investment adviser; and to commit mail fraud.

15
16 As I will explain in more detail in a few moments, a conspiracy, such
17 as the one charged in Count One here, is a criminal agreement to violate the law.
18 Counts Two, Three, Four, and Sixteen also charge certain of the Defendants with

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1 participating in additional conspiracies.

2
3 The remaining charges in the Indictment **that you must consider**,
4 which are set forth in Counts Six through Fifteen, Counts Seventeen and Eighteen
5 and Counts Twenty through Thirty-Three, allege what are called “substantive”
6 violations. Unlike a conspiracy charge, which is a charge of agreeing to commit
7 certain offenses, the substantive counts allege the actual commission of specified
8 offenses. There are two groups of substantive charges. The first group consists of
9 charges alleging various types of fraud. The second group consist of charges
10 alleging violations of the federal income tax laws.

11
12 **CONSPIRACY CHARGES –**
13 **GENERAL OVERVIEW:**
14 **(COUNTS ONE, TWO, THREE, FOUR AND SIXTEEN)**

15 Counts One, Two, Three and Four of the Indictment charge that
16 various combinations of the Defendants and others entered into conspiracies
17 violating Section 371 of Title 18 of the United States Code. That section of the
18 United States Code provides in relevant part that:

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1 If two or more persons conspire either to commit
2 any offense against the United States, or to defraud
3 the United States, or any agency thereof in any
4 manner or for any purpose, and one or more of
5 such persons do any act to effect the object of the
6 conspiracy, each. . . [is guilty of a crime.]

7
8 The Defendants are charged in these counts with participating in
9 conspiracies to violate several federal statutes.

10
11 Because the language of each of the conspiracy charges is lengthy, I
12 will just summarize the charges at this point. You will receive copies of the actual
13 Indictment when you retire to deliberate. I remind you that the Indictment itself is
14 not evidence.

15
16 Count One charges that Defendants DANIEL BONVENTRE,
17 ANNETTE BONGIORNO, JO ANN CRUPI, JEROME O'HARA and GEORGE
18 PEREZ participated in a criminal conspiracy to deceive investors –dealing with

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1 Madoff Securities, involving securities fraud, the falsification of books and records
2 concerning Madoff Securities' business, and mail fraud. The Indictment alleges
3 that this conspiracy existed from at least in or about the 1970s until in or about
4 2008. It alleges that this conspiracy had four different objectives or objects: first,
5 to commit securities fraud; second, to falsify records that the Securities and
6 Exchange Commission (known as the "SEC") requires registered broker-dealers to
7 keep; third, to falsify records that the SEC requires investment advisers to keep;
8 and, fourth, mail fraud.

9
10
11 Count Two charges that Defendants DANIEL BONVENTRE, JO
12 ANN CRUPI, JEROME O'HARA and GEORGE PEREZ participated in a criminal
13 conspiracy involving securities fraud and falsification of books and records in
14 connection with audits of Madoff Securities. The Indictment alleges that this
15 conspiracy existed from at least in or about 2003 until in or about 2008. It alleges
16 that this conspiracy had three different objectives or objects: first, to commit
17 securities fraud; second, to falsify records the SEC required registered broker-
18 dealers to keep; and, third, to falsify records the SEC required investment advisers

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1 to keep, all in connection with reviews of Madoff Securities conducted by the SEC
2 and an accounting firm known as KPMG.
3
4

5 Count Three charges that Defendant DANIEL BONVENTRE
6 participated in a criminal conspiracy at Madoff Securities to engage in accounting
7 fraud and to defraud banks. The Indictment alleges that this conspiracy existed
8 from at least in or about 1992 until on or about December 11, 2008. It alleges that
9 this conspiracy had six objects: first, to commit securities fraud; second, to falsify
10 records of a broker-dealer; third, to falsify records of an investment adviser; fourth,
11 to make false filings with the SEC; fifth, to commit mail fraud; and sixth, to
12 commit bank fraud.
13
14

15 Count Four charges that Defendant DANIEL BONVENTRE
16 participated in a criminal conspiracy to commit tax fraud at Madoff Securities from
17 at least in or about 1991 until on or about December 11, 2008. The Indictment
18 alleges that the object of this conspiracy was to defeat the lawful government

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1 function of the Internal Revenue Service, **which I will refer to as** the “IRS.”

2
3
4 ~~Count Five charges that Defendant DANIEL BONVENTRE~~
5 ~~participated in a criminal conspiracy to violate the Employee Retirement Income~~
6 ~~Security Act (known as “ERISA”) in connection with a fictitious job at Madoff~~
7 ~~Securities. The Indictment alleges that the object of this conspiracy was to submit~~
8 ~~false documentation allowing MR. BONVENTRE’s son to participate in employee~~
9 ~~benefit plans based on a so-called “no show” job at Madoff Securities and to file~~
10 ~~false Form 5500 reports with the United States Department of Labor.~~

11
12
13 Additionally, Count Sixteen of the Indictment charges that Defendant
14 JO ANN CRUPI participated with others in a conspiracy to commit bank fraud in
15 connection with loans obtained on behalf of Madoff Securities employee David
16 Kugel, in violation of Section 1349 of Title 18 of the United States Code.

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1 That section of the United States Code provides in relevant part as
2 follows:

3
4 Any person who attempts or conspires to commit
5 any offense [constituting bank fraud is guilty of a
6 crime].

7
8 Count Sixteen alleges that the object of the charged conspiracy was to
9 defraud a financial institution, the deposits of which were insured by the Federal
10 Deposit Insurance Corporation, the “FDIC.”

11
12 The Indictment also alleges that overt acts were committed in
13 furtherance of these various conspiracies. I will not read those allegations out loud
14 to you at this time.

15
16 With that summary of the conspiracy charges as background, I will
17 now give you detailed instructions on each charge and what it takes to prove each
18 charge, beginning with the conspiracy charged in Count One.

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1 First, I will explain the legal concept of a conspiracy.

2
3
4 **GENERAL CONCEPT OF A CONSPIRACY**
5 **(COUNTS ONE, TWO, THREE, FOUR, ~~FIVE~~ AND SIXTEEN)**
6

7 A conspiracy is a kind of criminal partnership – a combination or
8 agreement of two or more persons to join together to accomplish some unlawful
9 purpose. The crime of conspiracy to violate a federal law is an independent
10 offense. It is separate and distinct from an actual violation of any specific federal
11 statute, which the law refers to as a “substantive crime.”
12

13 Indeed, you may find the Defendant you are considering guilty of the
14 crime of conspiracy to violate federal law even though none of the substantive
15 crimes which were the objects of the particular alleged conspiracy was actually
16 committed. The law makes conspiracy, standing alone, a separate crime, even if
17 the conspiracy is not successful.
18
19

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ELEMENTS OF THE CRIME OF CONSPIRACY:
(COUNTS ONE, TWO, THREE, FOUR, ~~FIVE~~ AND SIXTEEN)

As I have told you earlier, Counts One, Two, Three, Four, ~~Five~~ and Sixteen of the Indictment charge the Defendants with participating in conspiracies.

Now, in order to sustain its burden of proof with respect to each of the charges of conspiracy, the Government must separately establish beyond a reasonable doubt each of the following three essential elements:

First, that the conspiracy charged existed – that is, the existence of an agreement or understanding to commit at least one of the object crimes charged in the Indictment;

Second, that the individual Defendant you are considering knowingly and willfully became a member of the conspiracy, that is, that he or she had the necessary intent or state of mind; and

Third, that any one of the conspirators – not necessarily one of the Defendants you are considering, but any member of the conspiracy – knowingly

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1 committed at least one overt act in the Southern District of New York in
2 furtherance of the conspiracy during the time frame of the conspiracy. The
3 Southern District of New York includes Manhattan, the Bronx and several counties
4 to the north of the Bronx.

5
6 Now let us separately consider these elements in detail.

7
8
9 **CONSPIRACY FIRST ELEMENT –**
10 **EXISTENCE OF THE CONSPIRACY:**
11 **(COUNTS ONE, TWO, THREE, FOUR, ~~FIVE~~ AND SIXTEEN)**
12

13 Starting with the first element – existence of the conspiracy – we ask –
14 what is a conspiracy? A conspiracy is an agreement or an understanding of two or
15 more persons to accomplish by joint action a criminal or unlawful purpose. The
16 gist, or the essence, of the crime of conspiracy is the unlawful combination or
17 agreement to violate the law. The success of the conspiracy, or the actual
18 commission of the criminal act which is the object of the conspiracy, is not an
19 essential element of that crime.
20

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1 In order to prove this element beyond a reasonable doubt, the
2 Government is not required to show that two or more people sat around a table and
3 entered into a solemn pact, orally or in writing, stating that they had formed a
4 conspiracy to violate the law and setting forth details of the plans or the part to be
5 played by each conspirator. Indeed, it is rare that a conspiracy can be proven by
6 direct evidence of an explicit agreement. Common sense tells you that when
7 people, in fact, agree to enter into a criminal conspiracy, much is left to the
8 unexpressed understanding. From its very nature, a conspiracy is almost invariably
9 secret in its origin and execution.

10
11 To show that a conspiracy existed, then, it is sufficient if the evidence
12 shows that two or more persons in some way or manner, through any contrivance,
13 explicitly or implicitly, came to an understanding to violate the law and to establish
14 an unlawful plan.

15
16 The adage “actions speak louder than words” is applicable here.
17 Usually, the only evidence available with respect to the existence of a conspiracy is
18 that of disconnected acts on the part of the alleged individual coconspirators.

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1 When taken together and considered as a whole, however, such acts may show a
2 conspiracy or agreement as conclusively as would direct proof.

3
4 So, in considering the first element of the crime of conspiracy as
5 charged in Counts One, Two, Three, Four, ~~Five~~, and Sixteen – whether the
6 conspiracy actually existed – you should consider all the evidence which has been
7 admitted with respect to the acts, conduct and declarations of each alleged
8 coconspirator, and the reasonable inferences to be drawn from such evidence.

9
10 It is sufficient to establish the existence of the conspiracy if, after
11 considering all of the relevant evidence, you find beyond a reasonable doubt that
12 the minds of at least two alleged conspirators met in an understanding way, and
13 that they agreed to work together, by the means alleged, to accomplish at least one
14 object of the conspiracy.

15
16
17 **CONSPIRACY FIRST ELEMENT –**
18 **OBJECTS OF THE CONSPIRACY:**
19 **(COUNTS ONE, TWO, THREE, FOUR, ~~FIVE~~ AND SIXTEEN)**
20
21

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1 An illegal conspiracy is an agreement to accomplish an unlawful
2 purpose. As I mentioned a few moments ago, each of the conspiracy counts in the
3 Indictment charges specific unlawful purposes, which are also referred to as
4 “objects,” of the particular conspiracy. I will now review each of those objects.

5
6
7 **Securities Fraud**

8 The first crime alleged to be an object of the conspiracies charged in
9 Counts One, Two and Three is securities fraud. Count One of the Indictment
10 charges (and here I am again summarizing) that it was an object of the conspiracy
11 that the Defendants, DANIEL BONVENTRE, ANNETTE BONGIORNO, JO
12 ANN CRUPI, JEROME O’HARA, and GEORGE PEREZ, in connection with the
13 purchase and sale of securities, would and did employ a scheme to defraud, make
14 false and fraudulent misrepresentations and omissions in communications to
15 persons who invested in and through Madoff Securities and engaged in acts,
16 practices and courses of business that would operate as a fraud and deceit on
17 persons who invested in and through Madoff Securities.

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1 Count Two of the Indictment charges, in summary, that it was an
2 object of the conspiracy that Defendants DANIEL BONVENTRE, JO ANN
3 CRUPI, JEROME O'HARA, and GEORGE PEREZ, in connection with the
4 purchase and sale of securities, would and did, in connection with audits at Madoff
5 Securities, employ a scheme to defraud and did make false and fraudulent
6 misrepresentations and omissions, and engaged in acts, practices and courses of
7 business that would operate as a fraud and deceit on persons who invested in and
8 through Madoff Securities.

9
10 Count Three of the Indictment charges that it was an object of the
11 conspiracy that Defendant DANIEL BONVENTRE, in connection with the
12 purchase and sale of securities, would and did, in connection with his creation and
13 filing of accounting records at Madoff Securities and his obtaining loans and lines
14 of credit from banks, employ a scheme to defraud and did make and cause Madoff
15 Securities to make false and fraudulent misrepresentations and omissions, and
16 engaged in acts, practices and courses of business that would operate as a fraud and
17 deceit on persons who invested in and through Madoff Securities.

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1 The relevant law here, with regard to the securities fraud object of
2 Counts One, Two and Three, is Title 15, United States Code, Section 78j(b) and
3 78ff and Title 17, Code of Federal Regulations, Section 240.10b-5, which prohibits
4 securities fraud. Later, when I explain Counts Six, Seven and Eight, which pertain
5 to the substantive crime of securities fraud, I will give you more detailed
6 instructions regarding the securities fraud crime that is alleged to have been an
7 object of the conspiracies charged in Counts One, Two, and Three.

8
9
10 **Falsifying Records of a Broker-Dealer**

11 The second crime alleged to be an object of the conspiracies charged
12 in Counts One, Two and Three is knowingly and willfully failing to make and keep
13 records that the SEC, by rule, required Madoff Securities to make and keep as a
14 broker-dealer. The relevant law here is Title 15, United States Code, Sections
15 78q(a) and 78ff; and Title 17, Code of Federal Regulations, Section 240.17a-3.
16 Because this object is also charged as a crime in separate substantive offenses, I
17 will be giving you further instructions about it later on, when I discuss the
18 substantive charges set forth in Counts Nine, Ten and Eleven of the Indictment.

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Falsifying Records of an Investment Adviser

The third crime alleged to be an object of the conspiracies charged in Counts One, Two, and Three is knowingly and willfully failing to make and keep records that the SEC required Madoff Securities to make and keep as an investment adviser. The relevant law here is Title 15, United States Code, Sections 80b-4 and 80b-17; and Title 17, Code of Federal Regulations, Section 275.204-2. Because this object is also charged in separate substantive offenses, I will be giving you further instructions about it later on, when I discuss the substantive charges set forth in Counts Twelve, Thirteen, and Fourteen.

Mail Fraud

The fourth crime alleged to be an object of the conspiracy charged in Count One is mail fraud. The relevant law here is Title 18, United States Code, Section 1341, which makes it a crime to use the United States mail system in connection with a scheme to defraud. The mail fraud statute provides, in pertinent part, as follows:

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1 Whoever, having devised or intending to devise
2 any scheme or artifice to defraud, or for obtaining
3 money or property by means of false or fraudulent
4 pretenses, representations, or promises, . . . for the
5 purpose of executing such scheme or artifice or
6 attempting so to do, . . . knowingly causes to be
7 delivered by mail or [commercial interstate] carrier
8 according to the direction thereon, or at the place
9 at which it is directed to be delivered by the person
10 to whom it is addressed, any such matter or thing,
11 shall [be guilty of a crime].

12 The three elements of mail fraud are thus:
13
14
15

16 First, that at or around the times alleged in the Indictment, there was a
17 scheme or artifice to defraud others of money or property by false or fraudulent
18 pretenses, representations, or promises;
19

20 Second, that the individual Defendant you are considering would and

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1 did knowingly and willfully participate in the scheme or artifice with knowledge of
2 its fraudulent nature and with specific intent to defraud; and
3

4 Third, that in execution of that scheme, the individual Defendant
5 would and did use, or cause the use of, the mails as specified in the Indictment.
6

7 I have instructed you on the specific elements of mail fraud here,
8 unlike the other alleged objects of the conspiracy, because there is no separate
9 substantive mail fraud charge in the Indictment.
10

11 You need not find that there was an agreement to specifically
12 accomplish each one of these objects. An agreement to accomplish any one of
13 these objects – securities fraud, falsifying records of a broker-dealer, falsifying
14 records of an investment adviser, or mail fraud – is sufficient to satisfy this
15 requirement as to Count One. Similarly, as to the conspiracy charged in Count
16 Two, a finding of an agreement to accomplish any one of the three alleged
17 objectives – securities fraud, falsifying books and records of a broker-dealer, or
18 falsifying books and records of an investment adviser – is sufficient.

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1
2 Although, when the particular conspiracy charge alleges more than
3 one object, finding one unlawful objective is sufficient to satisfy the illegal purpose
4 element, you must unanimously agree on which object, if any, was the specific
5 object or objects of the alleged conspiracy. You may find that there was more than
6 one illegal object of a particular conspiracy, but you must agree unanimously as to
7 each such object. If the Government fails to prove beyond a reasonable doubt that
8 at least one of the objects alleged in the conspiracy charge that you are considering
9 was in fact an objective of the conspiracy, you must find the individual Defendant
10 you are considering not guilty as to the conspiracy charge you are considering.
11

12 As to each of the ~~three~~ remaining conspiracy charges, the Indictment
13 alleges just one object. There are also substantive charges with respect to each of
14 these objects, so I will simply mention these counts and objects now. Count Four
15 of the Indictment charges that the object of the alleged conspiracy was to commit
16 tax fraud. ~~Count Five of the Indictment charges that the object of the alleged~~
17 ~~conspiracy was to violate ERISA by submitting false information to the United~~
18 ~~States Department of Labor concerning eligibility to participate in employee benefit~~

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1 ~~plans~~. And bank fraud was the alleged object of the conspiracy charged in Count
 2 Sixteen. As I stated earlier, I will provide you with more information on the
 3 elements of the objects charged as substantive offenses when I instruct you on the
 4 separate counts charging those offenses.

5
 6 **CONSPIRACY SECOND ELEMENT –**
 7 **MEMBERSHIP IN THE CONSPIRACY:**
 8 **(COUNTS ONE, TWO, THREE, FOUR, ~~FIVE~~ AND SIXTEEN)**
 9

10 If you conclude, when you consider each count, that the Government
 11 has proven beyond a reasonable doubt that the conspiracies charged in Counts One,
 12 Two, Three, Four, ~~Five~~, and Sixteen existed, you must next determine the second
 13 element, whether the individual Defendant you are considering participated in the
 14 conspiracy with knowledge of its unlawful purpose or purposes, and in furtherance
 15 of its unlawful objective or objectives.

16
 17 As to each of the conspiracy charges, the Government must prove
 18 beyond a reasonable doubt that the particular Defendant you are considering
 19 unlawfully, willfully, and knowingly entered into the conspiracy, the agreement,
 20 with a criminal intent, that is, with a purpose to violate the law, and agreed to take

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1 part in the conspiracy to further promote and cooperate in its unlawful objectives.

2
3
4 **“Knowingly,” “Willfully” and “Unlawfully” Defined**

5 “**Knowingly**” means to act voluntarily and deliberately, rather than
6 mistakenly or inadvertently.

7
8 “**Willfully**” means to act knowingly and purposely, with an intent to
9 do something the law forbids, that is to say, the actions of the Defendant in
10 question must have been the product of his or her conscious objective, with a bad
11 purpose either to disobey or to disregard the law.

12
13 “**Unlawfully**” simply means contrary to law. The Defendant in
14 question need not have known that he or she was violating any particular statute or
15 any particular rule. He or she need only have been aware of the generally unlawful
16 nature of his acts.

17
18 As I mentioned a moment ago, before an individual Defendant can be

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1 found to have been a conspirator, you must first find that he or she knowingly
2 joined in the unlawful agreement or plan. The key question, therefore, is whether
3 the individual Defendant you are considering joined the conspiracy with an
4 awareness of at least some of the basic aims and purposes of the unlawful
5 agreement.

6
7 Now, a defendant's knowledge can sometimes be a matter of
8 inference from the facts proved. Science has not yet devised a manner of looking
9 into a person's mind and knowing what that person is thinking. It is for you to
10 determine whether the Government has established beyond a reasonable doubt that
11 such knowledge and intent existed on the part of the Defendant you are
12 considering. In making that determination you may consider all of the evidence,
13 which may include evidence of certain acts and conversations alleged to have taken
14 place with certain Defendants or in their presence.

15
16 It is not necessary that a defendant be fully informed as to all the
17 details of the conspiracy in order to justify an inference of knowledge on his or her
18 part. To have guilty knowledge, an individual defendant need not have known the

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1 full extent of the conspiracy or all of its activities or all of its participants. It is not
2 even necessary that a defendant know every other member of the conspiracy. In
3 fact, a defendant may know only one other member of the conspiracy and still be a
4 coconspirator. However, mere suspicion or discomfort is not sufficient, standing
5 alone, to constitute knowledge. It is up to you, the jury, to determine based on all
6 of the evidence whether the individual Defendant you are considering acted with
7 knowledge of the unlawful purpose or purposes of the agreement.

8
9 You have heard evidence that Bernard Madoff, or Frank DiPascali,
10 told certain of the Defendants that it was acceptable to engage in some of the
11 actions underlying the charges in the Indictment. You may consider that evidence
12 in deciding whether a particular Defendant acted willfully and with knowledge of
13 the unlawful purpose or purposes of the agreement. You may also consider that
14 evidence in deciding questions of intent in connection with other charges in the
15 Indictment. However, the mere fact that the Defendant may have been told
16 something by his or her employer does not, in itself, necessarily mean that a person
17 lacked the required knowledge and intent.

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1 You must ask yourselves whether the Defendant honestly and in good
2 faith believed statements by his or her employer that the actions were proper. No
3 one can willfully and knowingly violate the law and excuse himself from the
4 consequences of his conduct simply by pleading that he or she followed someone
5 else's orders. In other words, if the Government has sustained its burden of
6 proving that the Defendant knew that he or she was breaking the law, it is no
7 defense that the Defendant was just following the orders of his or her employer.

8
9 Nor is it necessary that the Defendant in question received any
10 monetary benefit from participating in the conspiracy. Proof of a financial interest
11 in the outcome of a scheme is not essential, because obtaining a financial benefit is
12 not an element of a conspiracy charge. However, if you find that the individual
13 Defendant in question had a financial interest in the conspiracy's success , that is a
14 factor you may properly consider in determining whether or not the Defendant was
15 a member of the conspiracy charged in the Indictment.

16
17 The duration and extent of a defendant's participation in the
18 conspiracy has no bearing on the issue of a defendant's guilt. A defendant need

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1 not have joined the conspiracy at the outset. A defendant may have joined it for
2 any illegal purpose at any time during its progress, and that defendant will still be
3 held responsible for all that was done before he or she joined and all that was done
4 during the conspiracy's existence while the defendant was a member. Each
5 member of a conspiracy may perform separate and distinct acts and may perform
6 them at different times. Some conspirators play major roles, while others play
7 minor roles in the scheme. The law does not require an equal role. In fact, even a
8 single act may be sufficient to draw a defendant within the ambit of a conspiracy.

9
10 However, I want to caution you that mere ~~association~~ ~~presence~~ by one
11 person with another does not make that person a member of the conspiracy even
12 when coupled with knowledge that a conspiracy exists. Mere presence at the scene
13 of a crime, even if that ~~presence~~ ~~association~~ is coupled with knowledge that a crime
14 is being committed, is not sufficient to support a conviction. In other words,
15 knowledge without willful participation is not sufficient to support a conviction.

16
17 Nor may you infer an individual Defendant's participation in criminal
18 conduct merely from the fact that he or she associated with other people, including

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1 co-workers who were guilty of wrongdoing. Mere association with conspirators or
2 those involved in a criminal enterprise is insufficient to prove a Defendant's
3 participation in a conspiracy.

4
5 Moreover, the fact that the acts of a defendant, without knowledge of
6 the conspiracy and its unlawful objectives, merely happen to further the purposes
7 or objectives of the conspiracy does not make him or her a member of the
8 conspiracy. What is necessary is that the defendant has participated in the
9 conspiracy with knowledge of its unlawful purpose or purposes, and with an intent
10 to aid in the accomplishment of its unlawful objective or objectives.

11
12 In sum, before a finding of guilt, you must be satisfied beyond a
13 reasonable doubt that the individual Defendant you are considering, with an
14 understanding of the unlawful character of the specific conspiracy charged in the
15 Indictment, intentionally engaged, advised or participated in it for the purpose of
16 furthering its illegal objectives. He or she thereby becomes a knowing and willing
17 participant in the unlawful agreement – that is to say, a conspirator.

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1 A conspiracy, once formed, is presumed to continue until either its
2 objectives are accomplished or there is some affirmative act of termination by its
3 members. So, too, once a person is found to be a member of a conspiracy, that
4 person is presumed to continue being a member in the venture until the venture is
5 terminated, unless it is shown by some affirmative proof that the person withdrew
6 or disassociated himself or herself from it.

7
8
9 **CONSPIRACY THIRD ELEMENT –**
10 **OVERT ACTS:**
11 **(COUNTS ONE, TWO, THREE, FOUR, ~~FIVE~~ AND SIXTEEN)**
12

13 The third element of a conspiracy is the requirement of an overt act.
14 To sustain its burden of proof with respect to each of the ~~fivesix~~ charged
15 conspiracies ~~charged in the Indictment~~ upon which you will be asked to render
16 ~~verdicts~~, the Government must show beyond a reasonable doubt that at least one
17 overt act was committed in furtherance of the particular conspiracy by at least one
18 of the coconspirators – not necessarily by one of the Defendants on trial here – in
19 the Southern District of New York, within a particular period of time.
20

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1 The overt act requirement is simple. There must have been something
2 more than mere agreement: some overt step or action must have been taken by at
3 least one of the conspirators in furtherance of the conspiracy.

4
5 The Indictment sets forth numerous overt acts the Government alleges
6 were done by conspirators in furtherance of the charged conspiracies. I will not
7 read all of the overt acts listed in the Indictment because, in order for the
8 Government to satisfy the overt act requirement, it is not necessary for the
9 Government to prove that any of the overt acts specifically alleged in the
10 Indictment were committed. Indeed, you may find that overt acts were committed
11 that were not alleged in the Indictment at all. In short, it is sufficient for the
12 Government to show that the Defendant you are considering, or one of his or her
13 alleged coconspirators, knowingly committed at least one overt act in furtherance
14 of the particular conspiracy during the time frame of the conspiracy. You must,
15 however, be unanimous on what the particular overt act was for each particular
16 conspiracy charge.

17
18 An overt act, standing alone, may be an innocent, lawful act.

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1 Frequently, however, an apparently innocent act sheds its harmless character if it is
2 a step in carrying out, promoting, aiding or assisting the conspiratorial scheme.
3 You are therefore instructed that the overt act does not have to be an act that in and
4 of itself is criminal or constitutes an objective of the conspiracy.

5
6 Because there is a limit on how much time the Government has to
7 obtain an indictment, with respect to the charges in Counts One, Two, Three, and
8 ~~Five~~ and Sixteen, you cannot return a verdict of a guilty as to a particular
9 Defendant unless you find that the Government has proven, beyond a reasonable
10 doubt, that an overt act was committed in furtherance of each charged conspiracy
11 after November 17, 2005, by one of the coconspirators (or, if securities fraud is the
12 only object on which you agree unanimously for the relevant conspiracy, that an
13 overt act was committed after November 17, 2004). Your findings as to the
14 specific act and the relevant time frame must be unanimous.

15
16 With respect to the conspiracy charge against Mr. Bonventre in Count
17 Four, you cannot return a verdict of guilty unless you find that the Government has
18 proven, beyond a reasonable doubt, that an overt act was committed in furtherance

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1 of that conspiracy after October 1, 2006. Your finding as to the specific act and the
2 relevant time frame must be unanimous.

3
4
5 **CONSPIRACY –**
6 **TIME FRAME OF CONSPIRACY:**
7 **(COUNTS ONE, TWO, THREE, FOUR, ~~FIVE~~ AND SIXTEEN)**
8

9 The Indictment charges that the conspiracy alleged in Count One
10 existed from at least in or about the early 1970s up to and including on or about
11 December 11, 2008.

12
13 The Indictment charges that the conspiracy alleged in Count Two
14 existed from at least in or about 2003 up to and including on or about December
15 11, 2008.

16
17 The Indictment charges that the conspiracy alleged in Count Three
18 existed from at least in or about 1992 up to and including on or about December
19 11, 2008.

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1 The Indictment charges that the conspiracy alleged in Count Four
2 existed from at least in or about 1991 up to and including on or about December
3 11, 2008.

4
5 ~~The Indictment charges that the conspiracy alleged in Count Five~~
6 ~~existed from at least in or about 1998 up to and including on or about December~~
7 ~~11, 2008.~~

8
9 The Indictment charges that the conspiracy alleged in Count Sixteen
10 existed from at least in or about 2002 up to and including on or about 2007.

11
12 It is not essential that the Government prove that the conspiracy
13 started and ended in any specific month. Indeed, it is sufficient if you find that **the**
14 **charged conspiracy was** in fact ~~the charged conspiracy was~~ formed and that it
15 existed for some time within the period set forth in the Indictment, and that at least
16 one overt act was committed in furtherance of the charged conspiracy within that
17 period. You must, however, make a finding as to whether an overt act in
18 furtherance of each of the charged conspiracies was committed after a specific

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1 date, or dates, as I explained a few minutes ago.

2
3
4 **OVERVIEW OF THE SUBSTANTIVE CHARGES:**
5 **(COUNTS SIX THROUGH FIFTEEN, AND SEVENTEEN, AND**
6 **EIGHTEEN AND TWENTY THROUGH THIRTY-THREETHROUGH**
7 **THIRTY-THREE)**
8

9 I will now instruct you regarding the substantive counts of the
10 Indictment.

11
12
13 Count Six of the Indictment charges all of the Defendants with
14 committing securities fraud.

15
16
17 Count Seven charges Defendants DANIEL BONVENTRE, JO ANN
18 CRUPI, JEROME O'HARA and GEORGE PEREZ with committing securities
19 fraud.

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1 Count Eight charges Defendant DANIEL BONVENTRE with
2 committing securities fraud.
3
4

5 Count Nine charges all of the Defendants with falsifying the books
6 and records of a broker-dealer.
7
8

9 Count Ten charges Defendants DANIEL BONVENTRE, JO ANN
10 CRUPI, JEROME O'HARA and GEORGE PEREZ with falsifying the books and
11 records of a broker-dealer.
12
13

14 Count Eleven charges Defendant DANIEL BONVENTRE with
15 falsifying the books and records of a broker-dealer.
16
17
18

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Count Twelve charges all of the Defendants with falsifying the books and records of an investment adviser.

Count Thirteen charges Defendants DANIEL BONVENTRE, JO ANN CRUPI, JEROME O'HARA, and GEORGE PEREZ with falsifying the books and records of an investment adviser.

Count Fourteen charges Defendant DANIEL BONVENTRE with falsifying the books and records of an investment adviser.

Count Fifteen charges Defendant DANIEL BONVENTRE with causing false and misleading filings to be made with the SEC.

Count Seventeen charges Defendant JO ANN CRUPI with bank

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1 fraud.

2
3
4 Count Eighteen charges Defendant DANIEL BONVENTRE with
5 bank fraud.

6
7
8 ~~Count Nineteen charges Defendant DANIEL BONVENTRE with~~
9 ~~making a false filing to the U.S. Department of Labor in violation of the ERISA~~
10 ~~laws.~~

11
12
13 Each of these substantive counts also charges the Defendant or
14 Defendants with aiding and abetting the commission of the charged crime.

15
16
17 Count Twenty charges Defendant DANIEL BONVENTRE with
18 making and subscribing to a false income tax return for the year 2003.

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1
2 Count Twenty-One charges Defendant DANIEL BONVENTRE with
3 making and subscribing to a false income tax return for the year 2004.
4
5

6 Count Twenty-Two charges Defendant DANIEL BONVENTRE with
7 making and subscribing to a false income tax return for the year 2006.
8
9

10 Count Twenty-Three charges Defendant DANIEL BONVENTRE
11 with making and subscribing to a false income tax return for the year 2007.
12
13

14 Count Twenty-Four charges Defendant DANIEL BONVENTRE with
15 corruptly obstructing the lawful administration of the Internal Revenue laws.
16
17

18 Counts Twenty-Five through Twenty-Nine charge Defendant

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1 ANNETTE BONGIORNO with tax evasion, for the years 2004 through 2008.

2
3
4 Count Thirty charges Defendant ANNETTE BONGIORNO with
5 corruptly obstructing the lawful administration of the Internal Revenue laws.
6
7

8 Counts Thirty-One through Thirty-Three charge Defendant JO ANN
9 CRUPI with Tax Evasion for the tax years 2004, 2007 and 2008.
10

11 As you may have noticed, all of the objectives of the conspiracy
12 charges, with the exception of mail fraud, are also charged as substantive offenses.
13

14 Before I give you further detailed instructions as to what it takes to
15 prove these substantive charges, let me further clarify the difference between the
16 conspiracy counts, which are charged in Counts One, Two, Three, Four, ~~Five~~ and
17 Sixteen, and the substantive counts, which are charged in Counts Six through
18 Fifteen, ~~and~~ Seventeen ~~and Eighteen and Nineteen~~ through Thirty-Three of the

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1 Indictment.

2
3 A conspiracy, as I said, is a separate crime of agreeing to commit an
4 unlawful objective. Here, the Government contends that the substantive violations
5 alleged to be objects of the conspiracies actually occurred. With the exception of
6 mail fraud, Defendants are charged in the Indictment with committing the
7 substantive offenses that are the alleged objects of the conspiracy, as well as with
8 conspiracy itself.

9
10 I will now instruct you on the substantive crimes charged in the
11 Indictment.

12
13
14 **SECURITIES FRAUD - THE STATUTE AND RULE 10B-5:**
15 **(COUNTS SIX, SEVEN AND EIGHT)**

16
17
18 Count Six, Seven and Eight of the Indictment charge that the
19 Defendants committed securities fraud in connection with their work at Madoff
20 Securities.

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Count Six charges Defendants DANIEL BONVENTRE, ANNETTE BONGIORNO, JO ANN CRUPI, JEROME O’HARA AND GEORGE PEREZ as follows:

[The Court reads Count Six of the Indictment (Indictment ¶ 94).]

Count Seven charges Defendants DANIEL BONVENTRE, JO ANN CRUPI, JEROME O’HARA AND GEORGE PEREZ as follows:

[The Court reads Count Seven of the Indictment (Indictment ¶ 96).]

Count Eight charges Defendant DANIEL BONVENTRE as follows:

[The Court reads Count Eight of the Indictment (Indictment ¶ 98).]

The relevant statute for these securities fraud counts is Section 10(b) of the Securities Exchange Act of 1934, which is codified as Title 15, United States

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1 Code, Section 78j(b). Section 10(b) provides, in pertinent part, that:

2
3 It shall be unlawful for any person, directly or
4 indirectly, by the use of any means or
5 instrumentality of interstate commerce or of the
6 mails, or of any facility of any national securities
7 exchange . . . To use or employ, in connection
8 with the purchase or sale of any security registered
9 on a national securities exchange or any security
10 not so registered, . . . any manipulative or
11 deceptive device or contrivance in contravention of
12 such rules and regulations as the [SEC] may
13 prescribe as necessary or appropriate in the public
14 interest or for the protection of investors.

15
16 Based on its authority under this statute, the SEC has issued a number
17 of rules and regulations, one of which, known as Rule 10b-5, is relevant here. Rule
18 10b-5 reads as follows:
19

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1 It shall be unlawful for any person, directly or
2 indirectly, by the use of any means or
3 instrumentality of interstate commerce, or of the
4 mails, or of any facility of any national securities
5 exchange, (a) To employ any device, scheme, or
6 artifice to defraud, (b) To make any untrue
7 statement of a material fact or to omit to state a
8 material fact necessary in order to make the
9 statements made, in light of the circumstances
10 under which they were made, not misleading, or
11 (c) To engage in any act, practice, or course of
12 business which operates or would operate as a
13 fraud or deceit upon any person, in connection
14 with the purchase or sale of any security.

15
16 ~~With respect to the charges in Counts Six, Seven and Eight, you must~~
17 ~~decide whether the Government has proven beyond a reasonable doubt that the~~
18 ~~Defendant you are considering committed, or caused to be committed, an act of~~

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~~securities fraud after November 17, 2004. Your decision as to whether the act was fraudulent, and as to the timing of the act, must be unanimous.~~

SECURITIES FRAUD-ELEMENTS:
(COUNTS SIX, SEVEN AND EIGHT)

To prove a violation of Section 10(b), the Government must prove each of the following elements beyond a reasonable doubt for each Defendant charged:

First, that in connection with the purchase or sale of securities, the Defendant you are considering did any one or more of the following:

(1) employed a device, scheme or artifice to defraud, or

(2) made an untrue statement of a material fact or omitted to state a material fact which made what was said, under the circumstances, misleading, or

(3) engaged in an act, practice or course of business that operated, or would

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1 operate, as a fraud or deceit upon a purchaser or seller;

2
3 Second, that the Defendant you are considering acted knowingly,
4 willfully and with the intent to defraud a purchaser or seller; and
5

6 Third, that the Defendant you are considering used or caused to be
7 used, any means or instruments of transportation or communication in interstate
8 commerce or the mails in furtherance of the fraudulent conduct.
9

10 I will now explain these elements in more detail.
11
12
13

14
15 **SECURITIES FRAUD FIRST ELEMENT -**
16 **FRAUDULENT ACT:**
17 **(COUNTS SIX, SEVEN AND EIGHT)**
18

19 The first element that the Government must prove beyond a
20 reasonable doubt is that, in connection with the purchase or sale of securities, the
21 Defendant you are considering did any one or more of the following:

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(1) employed a device, scheme or artifice to defraud, or

(2) made an untrue statement of a material fact or omitted to state a material fact which made what was said, under the circumstances, misleading, or

(3) engaged in an act, practice or course of business that operated, or would operate, as a fraud or deceit upon a purchaser or seller.

It is not necessary for the Government to establish all three types of unlawful conduct in connection with the purchase or sale of securities. Any one will be sufficient for a conviction if you so find. However, you must be unanimous as to which type of unlawful conduct took place.

The statute requires that the defendant's action be **“in connection with”** the purchase or sale of securities. You need not find that the Defendant you are considering actually participated in any specific purchase or sale of a security if you find that the Defendant participated, or agreed to participate, in fraudulent

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1 conduct that was “in connection with” a purchase or sale of securities.

2
3 The requirement that the fraudulent conduct be “in connection with” a
4 purchase or sale of securities is satisfied so long as there was some nexus or
5 relation between the allegedly fraudulent conduct and the sale or purchase of
6 securities.

7
8 Fraudulent conduct may be “in connection with” the purchase or sale
9 of securities if you find that the alleged fraudulent conduct “touched upon” a
10 securities transaction. It is not a defense to a charge of participation in an overall
11 scheme to defraud that the Defendant you are considering was not involved in the
12 scheme from its inception or played only a minor role with no contact with the
13 investors and purchasers of the securities in question. It is also no defense that the
14 Defendant or persons with whom the Defendant acted did not control any actual
15 securities in the course of the fraud. Nor is it necessary for you to find that the
16 individual Defendant was or would be the actual seller of the securities. It is
17 sufficient if the misrepresentation or omission of material fact involved the
18 purchase or sale of securities.

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1 By the same token, the Government need not prove that a Defendant
2 personally made the misrepresentation or that he or she omitted the material fact.
3 It is sufficient if the Government establishes that the Defendant caused the
4 statement to be made or the fact to be omitted. With regard to the alleged
5 misrepresentations and omissions, you must determine whether the statements
6 were true or false when made, and, in the case of alleged omissions, whether the
7 omissions were materially and deliberately misleading.

8
9 The statute provides that securities fraud can be committed by
10 employing a **“device, scheme, or artifice to defraud.”** A “device, scheme or
11 artifice to defraud” is merely a plan for the accomplishment of any fraudulent or
12 deceitful objective. Fraud is a general term which embraces all ingenious efforts
13 and means that individuals devise to take advantage of others. It includes all kinds
14 of manipulative and deceptive acts. The fraudulent or deceitful conduct alleged
15 need not relate to the actual investment value of the securities involved in this case.

16
17 Securities fraud can also be committed through **false or fraudulent**
18 **statements and omissions.** A statement, representation, claim, or document is

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1 false if it is untrue when made and was known to be untrue, at the time it was
2 made, by the person making it or causing it to be made. A representation or
3 statement is fraudulent if it was falsely made with the intention to deceive. The
4 concealment of material facts in a manner that makes what is said or represented
5 deliberately and materially misleading may also constitute false or fraudulent
6 statements under the statute.

7
8 The deception need not be based upon spoken or written words alone.
9 The arrangement of the words, or the circumstances in which they are used, may
10 convey the false and deceptive appearance.

11
12 A false or fraudulent statement or omission must concern a “**material**
13 **fact**” to violate the statute. If you find that the Government has established beyond
14 a reasonable doubt that a statement was false or a statement was omitted rendering
15 the statements that were made misleading, you must next determine whether the
16 statement or omission was material under the circumstances.

17
18 The word “material” is used to describe the kind of false statements or

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1 omissions that are wrongful under the fraud statutes. A material fact is one that
2 would have been important to a reasonable investor in making an investment
3 decision. We use the word “material” to distinguish between the kinds of
4 statements we care about and those that are of lesser significance.

5
6 If you find that the deception involved the making of material
7 misrepresentations or omissions of material facts, it does not matter whether the
8 intended victims were gullible buyers or sophisticated investors, because the
9 securities laws protect the gullible and unsophisticated as well as the experienced
10 investor.

11
12 Nor does it matter whether the alleged unlawful conduct was or would
13 have been successful, or whether the Defendant you are considering profited or
14 would have received any benefit as a result of the alleged scheme. Success is not
15 an element of a violation of Section 10(b) or Rule 10b-5. However, if you find that
16 the Defendant you are considering expected to or did profit from the alleged
17 scheme, you may consider that in relation to the element of intent, which I will
18 discuss in a moment.

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**SECURITIES FRAUD SECOND ELEMENT - KNOWLEDGE, INTENT
AND WILLFULNESS:
(COUNTS SIX, SEVEN AND EIGHT)**

The second element that the Government must establish beyond a reasonable doubt is that the individual Defendant you are considering participated in the scheme to defraud knowingly, willfully and with the intent to defraud a purchaser or seller.

As I explained earlier, “knowingly” means to act voluntarily and deliberately, rather than mistakenly or inadvertently, while “willfully” means to act knowingly and purposely, with an intent to do something the law forbids. “Intent to defraud” in the context of the securities laws means to act knowingly and with intent to deceive. The question of whether a person acted knowingly, willfully and with intent to defraud is a question of fact for you to determine, like any other fact question. This question involves one’s state of mind. Direct proof of knowledge and fraudulent intent is almost never available. It would be a rare case where it could be shown that a person wrote or stated that as of a given time in the past he

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1 committed an act with fraudulent intent. Such direct proof is not required. The
2 ultimate facts of knowledge and criminal intent, though subjective, may be
3 established by circumstantial evidence, based upon a person's outward
4 manifestations, his words, his conduct, his acts and all the surrounding
5 circumstances disclosed by the evidence and the rational or logical inferences that
6 may be drawn therefrom.

7
8 What is referred to as drawing inferences from circumstantial
9 evidence is no different from what people normally mean when they say, "use your
10 common sense." Using your common sense means that, when you come to decide
11 whether the defendant possessed or lacked an intent to defraud, you don't limit
12 yourself to what the defendant said, but you also look at what he or she did and
13 what others did in relation to the defendant and, in general, everything that
14 occurred. Circumstantial evidence, if believed, is of no less value than direct
15 evidence. In either case, the essential elements of the crime charged must be
16 established beyond a reasonable doubt.

17
18 Since an essential element of the crime charged is intent to defraud, it

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1 follows that good faith on the part of a defendant (that is, belief in the truth of the
2 matter asserted and lack of intent to defraud) is a complete defense to a charge of
3 securities fraud. A defendant, however, has no burden to establish a defense of
4 good faith. The burden is on the Government to prove fraudulent intent and
5 consequent lack of good faith beyond a reasonable doubt. Under the anti-fraud
6 statutes, even false representations or statements or omissions of material facts do
7 not amount to a fraud unless done with fraudulent intent. However misleading or
8 deceptive conduct may be, it is not fraudulent if it was carried out in good faith.
9 An honest belief by a defendant in the truth of the representations made is a good
10 defense, however inaccurate the statements may turn out to be.

11
12 In considering whether or not a defendant acted in good faith, you are,
13 however, instructed that a belief by the defendant, if such belief existed, that
14 ultimately everything would work out so that no investors would lose any money
15 does not require a finding by you that he acted in good faith. No amount of honest
16 belief on the part of a defendant that the scheme will ultimately make a profit for
17 the investors will excuse fraudulent actions or knowingly false representations by
18 him.

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1 As a practical matter, then, to sustain any fraud charge against a
2 particular Defendant, the Government must establish beyond a reasonable doubt
3 that the particular Defendant you are considering knew that his or her conduct as a
4 participant in the alleged scheme was calculated to deceive and nonetheless, he or
5 she associated himself with the alleged fraudulent scheme.

6
7 To conclude on this element, if you find that the Government has not
8 proven beyond a reasonable doubt that the Defendant in question was a knowing
9 participant in the scheme and had the intent to defraud, then you must acquit that
10 Defendant.

11
12 On the other hand, if you find that the Government has established
13 beyond a reasonable doubt not only the first element, namely, the existence of a
14 scheme to defraud, but also this second element, that the individual Defendant you
15 are considering was a knowing participant and acted with intent to defraud, then
16 you must proceed to consider the third element, as to which I am about to instruct
17 you.

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SECURITIES FRAUD THIRD ELEMENT -
INTERSTATE COMMERCE:
(COUNTS SIX, SEVEN AND EIGHT)

The third and final element that the Government must prove beyond a reasonable doubt is that the Defendant you are considering knowingly used, or caused to be used, the mails or the instrumentalities of interstate commerce in furtherance of the scheme to defraud or fraudulent conduct. It is not necessary that the Defendant in question be or would have been directly or personally involved in any mailing or use of an instrumentality of interstate commerce. If the conduct alleged would naturally and probably result in the use of the mails or an instrumentality of interstate commerce, this element would be satisfied.

Nor is it necessary that the items sent through the mails or communicated through an instrumentality of interstate commerce did or would contain the fraudulent material, or anything criminal or objectionable. The matter mailed or communicated may be entirely innocent so long as it is in furtherance of the alleged scheme to defraud or fraudulent conduct. The use of the mails or instrumentality of interstate commerce need not be central to the execution of the

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1 scheme or even be incidental to it. All that is required is that the use of the mails
2 or instrumentality of interstate commerce bear some relation to the object of the
3 alleged scheme or fraudulent conduct.
4

5 In fact, the actual purchase or sale of a security need not be
6 accompanied by the use of the mails or instrumentality of interstate commerce, so
7 long as the mails or instrumentality of interstate commerce are used in furtherance
8 of the scheme and the Defendant is still engaged in actions that are part of a
9 fraudulent scheme when the mails or the instrumentalities of interstate commerce
10 are used.
11

12 With respect to the charges in Counts Six, Seven and Eight, you cannot
13 return a verdict of guilty as to any particular defendant unless you find that the
14 Government has proven beyond a reasonable doubt that the Defendant you are
15 considering committed, or caused to be committed, an act of securities fraud after
16 November 17, 2004. Your decision as to whether the act was fraudulent, and as to
17 the timing of the act, must be unanimous.
18

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FALSIFYING RECORDS OF A BROKER-DEALER:
(COUNTS NINE, TEN AND ELEVEN)

Counts Nine, Ten, and Eleven charge the Defendants with falsifying,
or causing the falsification of, the books and records of a broker-dealer, here,
Madoff Securities.

Count Nine charges Defendants DANIEL BONVENTRE, ANNETTE
BONGIORNO, JO ANN CRUPI, JEROME O’HARA and GEORGE PEREZ as
follows:

[The Court reads Count Nine of the Indictment (Indictment ¶ 100).]

Count Ten charges Defendant DANIEL BONVENTRE, JO ANN
CRUPI, JEROME O’HARA and GEORGE PEREZ as follows:

[The Court reads Count Ten of the Indictment (Indictment ¶ 102).]

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Count Eleven charges Defendant DANIEL BONVENTRE as follows:

[The Court reads Count Eleven of the Indictment (Indictment ¶ 94).]

Title 15 of the United States Code, Section 78c, defines “**broker**” as “any person engaged in the business of effecting transactions in securities for the account of others.” The statute also defines a “**dealer**” as “any person engaged in the business of buying and selling securities . . . for such person’s own account through a broker or otherwise.” Federal law requires that companies which are registered as broker-dealers, maintain certain records as prescribed by the SEC. The records include client account statements, trade confirmations, trade blotters, order entry and execution reports, commission reports, documents relating to the profit, loss, and revenue, security receipt, delivery and custody reports, general ledgers, stock records, and reports derived from the general ledgers and stock records. The record keeping requirements are established by Title 17 of the Code of Federal Regulations, Section 240.17a-3. Title 15 of the United States Code, Section 78q(a), generally requires registered broker-dealers to “make and keep for prescribed periods such records, furnish such copies thereof, and make and

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1 disseminate such reports as the Commission, by rule, prescribes as necessary or
2 appropriate in the public interest, for the protection of investors, or otherwise.”

3
4 Counts Nine, Ten and Eleven also charge violations of Section 32 of
5 the Securities Exchange Act of 1934, Title 15 of the United States Code, Section
6 78ff. Section 78ff provides in relevant part:

7
8 [A]ny person who willfully and knowingly makes,
9 or causes to be made, any statement in any
10 application, report, or document required to be filed
11 under this chapter or any rule or regulation
12 thereunder . . . which statement was false or
13 misleading with respect to any material fact [shall
14 be guilty of a crime].

15
16 This section is the general provision of the federal securities laws that
17 makes it unlawful to willfully violate any provision of the Securities Exchange Act
18 of 1934, or any rule or regulation under that Act, by making materially false and
19 misleading statements in applications, reports, and documents required to be filed

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with the SEC.

FALSIFYING RECORDS OF A BROKER DEALER -
ELEMENTS OVERVIEW:
(COUNTS NINE, TEN AND ELEVEN)

For each of Counts Nine, Ten and Eleven, to establish a violation of Title 15 of the United States Code, Sections 78q(a) and 78ff, the Government must prove each of the following elements beyond a reasonable doubt:

First, that Madoff Securities was a registered broker-dealer that was required under the Securities Exchange Act of 1934 to make and keep the records charged in that Count; and

Second, that the Defendant you are considering knowingly and willfully made, or caused to be made, a materially false or misleading statement in those records. Now I will explain these two elements in more detail.

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FALSIFYING RECORDS OF A BROKER DEALER
FIRST ELEMENT - REQUIRED RECORDS:
(COUNTS NINE, TEN AND ELEVEN)

With respect to each of Counts Nine, Ten and Eleven, respectively,
the Government must show, first, that Madoff Securities was registered as a
broker-dealer and was required by the Securities Exchange Act of 1934 to maintain
the records charged in that Count. If the Government has not proven that Madoff
Securities was a registered broker-dealer, you must acquit the Defendants of all of
the charges in Counts Nine, Ten and Eleven.

Registered broker-dealers are required to make and keep certain
records as prescribed by the SEC. These records include client account statements,
trade confirmations, trade blotters, order entry and execution reports, security
receipt, delivery and custody records, general ledgers setting forth all assets and
liabilities, income expenses and capital accounts of the broker dealer, stock
records, and reports derived from the general ledgers and stock records. If you
find that the Government has proven beyond a reasonable doubt that Madoff
Securities was registered with the SEC as a broker-dealer under the Securities
Exchange Act of 1934, then it was required to make and keep these records and the

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first element is satisfied.

FALSIFYING RECORDS OF A BROKER DEALER
SECOND ELEMENT - FALSITY:
(COUNTS NINE, TEN AND ELEVEN)

The Government next must prove, with respect to each of Counts Nine, Ten and Eleven, that the individual Defendant you are considering knowingly and willfully made, or caused to be made, materially false and fraudulent statements in the records you are considering.

A statement or representation is “false” if it was untrue when made, and known at the time to be untrue by the person making it or causing it to be made. A representation or statement is fraudulent if it was falsely made with the intention to deceive. The concealment of material facts in a manner that makes what is said or represented deliberately and materially misleading may also constitute false or fraudulent statements under the statute.

I have defined the term “material” for you previously and you should use that definition here. I have also defined the terms “knowingly” and “willfully”.

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1 Those same definitions, and the defense of good faith, apply here. A statement
2 made with a good faith belief in its accuracy does not amount to a false statement
3 and is not a crime. This is so even if the statement, is in fact, erroneous.
4

5 To establish this element, the Government need not prove that the
6 Defendant in question himself or herself physically made or otherwise personally
7 prepared the statements in question. It is sufficient if the Government has proved
8 that the Defendant in question knowingly and willfully caused materially false
9 information to be included in a required record by some person.
10

11 Now, each of Counts Nine, Ten and Eleven is based on a different set
12 of records required to be maintained by Madoff Securities as a broker-dealer.
13

14 Count Nine charges that Defendants DANIEL BONVENTRE,
15 ANNETTE BONGIORNO, JO ANN CRUPI, JEROME O'HARA and GEORGE
16 PEREZ made, or caused to be made, fraudulent required books and records
17 including client account statements and trade confirmations.
18

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1 Count Ten charges that Defendants DANIEL BONVENTRE, JO
2 ANN CRUPI, JEROME O’HARA and GEORGE PEREZ made, or caused to be
3 made, fraudulent required books and records including client account statements,
4 trade blotters, order entry and execution reports, commission reports, Depository
5 Trust Corporation (“DTC”) reports, documents relating to the profit, loss and
6 revenue of Madoff Securities, and General Ledgers and/or stock records.

7
8 Count Eleven charges that Defendant DANIEL BONVENTRE made,
9 or caused to be made, fraudulent required books and records including general
10 ledgers, stock records, and/or reports derived from the general ledgers and stock
11 records.

12
13 The Government contends that each of these types of records
14 maintained by Madoff Securities contained a number of materially false statements
15 and misleading omissions. The Government is not required to prove all of these
16 false statements and omissions. However, in order to convict a Defendant on the
17 false broker-dealer books and records charge or charges against that Defendant,
18 each juror must agree with each of the other jurors that the same statement in the

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1 same required record that you are considering was in fact materially false or
2 misleading. You need not unanimously agree on each such statement alleged, but,
3 you may not convict the individual Defendant you are considering of a particular
4 count, unless you find unanimously that the Government has proven beyond a
5 reasonable doubt that at least one particular statement in a required record was
6 materially false and misleading and that the Defendant you are considering
7 knowingly and willfully made the statement or caused it to be made.

8
9 With respect to the charges in Counts Nine, Ten and Eleven, you
10 cannot return a verdict of guilty as to a particular Defendant unless you find that
11 the Government has proven beyond a reasonable doubt that the Defendant you are
12 considering made, or caused to be made, a fraudulent statement in a required
13 record after November 17, 2005. Your decisions as to whether the particular
14 statement was fraudulent, and as to the timing of the statement, must be
15 unanimous.

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FALSIFYING RECORDS OF AN INVESTMENT ADVISER -
GENERAL OVERVIEW:
(COUNTS TWELVE, THIRTEEN AND FOURTEEN)

Counts Twelve, Thirteen, and Fourteen charge the Defendants with falsifying, or causing the falsification of, the books and records of an investment adviser, here, Madoff Securities.

Count Twelve charges Defendants DANIEL BONVENTRE, ANNETTE BONGIORNO, JO ANN CRUPI, JEROME O'HARA and GEORGE PEREZ as follows:

[The Court reads Count Twelve of the Indictment (Indictment ¶ 106).]

Count Thirteen charges Defendants DANIEL BONVENTRE, JO ANN CRUPI, JEROME O'HARA and GEORGE PEREZ as follows:

[The Court reads Count Thirteen of the Indictment (Indictment ¶ 108).]

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Count Fourteen charges Defendant DANIEL BONVENTRE as follows:

[The Court reads Count Fourteen of the Indictment (Indictment ¶ 110).]

Federal law requires that companies which are investment advisers and make use of the mails or any instrumentalities of interstate commerce in connection with their business, make and keep records as prescribed by SEC rules. These records include client account statements, trade confirmations, trade blotters, order entry and execution reports, commission reports, documents relating to the profit, loss, and revenue of the investment adviser, security receipt, delivery and custody records, financial statements, internal audit working papers, general ledgers, stock records, and reports derived from the general ledgers and stock records.

Title 15 of the United States Code, Section 80b-4, requires investment advisers to “make and keep for prescribed periods such records . . . furnish such

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1 copies thereof, and make and disseminate such reports as the [SEC], by rule, may
2 prescribe as necessary or appropriate in the public interest or for the protection of
3 investors.” These counts also charge violations of Title 15 of the United States
4 Code, Section 80b-17. Section 80b-17 provides in relevant part:

5
6 Any person who willfully violates any provision of
7 this subchapter, or any rule, regulation, or order
8 promulgated by the Commission under authority
9 thereof, shall [-be guilty of a crime].

10
11 This statute makes it unlawful to willfully violate the provisions of
12 law that require investment advisers to maintain records required by the SEC.

13
14
15 **FALSIFYING RECORDS OF AN INVESTMENT ADVISER -**
16 **ELEMENTS OF THE OFFENSE:**
17 **(COUNTS TWELVE, THIRTEEN AND FOURTEEN)**
18

19 For each of Counts Twelve, Thirteen, and Fourteen, to establish a
20 violation of Title 15 of the United States Code, Sections 80b-4 and 80b-17, the
21 Government must prove each of the following four elements beyond a reasonable

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1 doubt:

2
3 First, that Madoff Securities was a registered or unregistered
4 investment adviser;

5
6 Second, that Madoff Securities made use of the mails or any
7 instrumentalities of interstate commerce in connection with its investment advisory
8 business;

9
10 Third, that Madoff Securities was required by law to make and keep
11 the records charged in that Count;

12
13 Fourth, that the individual Defendant you are considering knowingly
14 and willfully caused Madoff Securities to fail to make and keep those records
15 required by law.

16
17 Now I will explain these four elements in more detail.
18

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FALSIFYING RECORDS OF AN INVESTMENT ADVISER -
FIRST ELEMENT:
(COUNTS TWELVE, THIRTEEN AND FOURTEEN)

With respect to each of Counts Twelve, Thirteen, and Fourteen, respectively, the Government must show, first, that at the relevant time Madoff Securities was an investment adviser that was registered or required to be registered under section 203 of the Investment Advisers Act. An **investment adviser** is “any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities,” with certain exceptions not applicable here. An investment adviser must register with the SEC unless it qualifies for an exception from the Act’s registration requirements. None of the exceptions applies here.

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1 I instruct you that Madoff Securities registered as an investment
2 adviser as of August 25, 2006.

3
4
5 **FALSIFYING RECORDS OF AN INVESTMENT ADVISER**
6 **SECOND ELEMENT - USE OF THE MAILS:**
7 **(COUNTS TWELVE, THIRTEEN AND FOURTEEN)**
8

9 The Government next must prove, with respect to each of Counts
10 Twelve, Thirteen, and Fourteen, that Madoff Securities made use of the mails or
11 any instrumentalities of interstate commerce in connection with its investment
12 advisory business. The use of the mails or any instrumentalities of interstate
13 commerce can be from one state to another, or just within a state or even a single
14 city; it does not matter, as long as the United States mails or any instrumentalities
15 of interstate commerce were used. “Instrumentalities of interstate commerce”
16 include the national telephone system, even when used only for local calls, the
17 internet, and email systems, even when used only within one state.

18
19 The mailing or use of an instrumentality of interstate commerce need
20 not involve a false record or any fraudulent representation. Moreover, it is not

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1 necessary for the defendant to be directly or personally involved in the mailing or
2 use of an instrumentality of interstate commerce.

3
4
5
6 **FALSIFYING RECORDS OF AN INVESTMENT ADVISER**
7 **THIRD ELEMENT - REQUIRED RECORDS:**
8 **(COUNTS TWELVE, THIRTEEN AND FOURTEEN)**
9

10 With respect to each of Counts Twelve, Thirteen, and Fourteen,
11 respectively, the Government must show that Madoff Securities was required by
12 law to maintain the records charged in that Count in its capacity as an investment
13 adviser. I have already instructed you that investment advisers who make use of
14 the mails or any instrumentalities of interstate commerce in connection with their
15 business are required to make and keep records as prescribed by the SEC.
16

17 If you find that the Government has proven that at the relevant time
18 that Madoff Securities was an investment adviser required to be registered with the
19 SEC, and that it made use of the mails or any instrumentalities of interstate
20 commerce in connection with its business, the records it was required to keep

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1 included: client account statements, trade confirmations, trade blotters, order entry
2 and execution reports, security receipt, delivery and custody records, financial
3 statements and internal audit papers relating to the business of the investment
4 adviser, general ledgers, stock records, and reports derived from the general
5 ledgers and stock records.

6
7 If you further find that the Government has proven that Madoff
8 Securities, as an investment adviser, had or purported to have custody or
9 possession of securities or funds of any client, Madoff Securities was also required
10 to keep and maintain additional documents, including copies of confirmations of
11 all transactions effected by or for the account of a client.

12
13 Count Twelve charges that Defendants DANIEL BONVENTRE,
14 ANNETTE BONGIORNO, JO ANN CRUPI, JEROME O'HARA and GEORGE
15 PEREZ caused Madoff Securities to keep false and fraudulent books and records
16 including client account statements and trade confirmations.

17
18 Count Thirteen charges that, in connection with the SEC and KPMG

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audits, Defendants DANIEL BONVENTRE, JO ANN CRUPI, JEROME O'HARA and GEORGE PEREZ caused Madoff Securities to keep false and fraudulent books and records including client account statements, trade blotters, order entry and execution reports, commission reports, DTC reports, documents relating to the profit, loss and revenue of Madoff Securities, and/or stock records.

Count Fourteen charges that Defendant DANIEL BONVENTRE caused Madoff Securities to keep false and fraudulent books and records including general ledgers, stock records and/or reports derived from the general ledgers or stock records.

FALSIFYING RECORDS OF AN INVESTMENT ADVISER
FOURTH ELEMENT - FAILURE TO MAKE AND KEEP REQUIRED
RECORDS:
(COUNTS TWELVE, THIRTEEN AND FOURTEEN)

The Government next must prove, with respect to each of Counts Twelve, Thirteen and Fourteen, that the individual Defendant you are considering knowingly and willfully caused Madoff Securities to fail to make and keep those records required by law.

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1 I have defined the terms and “knowingly” and “willfully”. Those
2 same definitions apply here, as does the defense of good faith. A good faith belief
3 on the part of an individual Defendant that Madoff Securities made and kept those
4 records required by law is a complete defense to these charges, even if that belief
5 was erroneous.

6
7 To establish this element, the Government need not prove that the
8 defendant in question physically made or otherwise personally prepared or
9 personally failed to maintain those records required by law. It is sufficient if the
10 Government has proved that the Defendant in question knowingly and willfully
11 caused Madoff Securities to fail to make and keep required records.

12
13 Now, each of Counts Twelve, Thirteen and Fourteen is based on a
14 separate set of records maintenance requirements from those that applied to
15 Madoff Securities as an investment adviser. The Government contends that each
16 of these records was knowingly and willfully improperly maintained at Madoff
17 Securities. The Government is not required to prove all of these failures to make
18 and keep required records of an investment adviser. However, in order to convict

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1 an individual Defendant on a particular count, each juror must agree with each of
2 the other jurors that the particular Defendant you are considering knowingly and
3 willfully caused the particular record that you are considering to be improperly
4 maintained. You need not unanimously agree on each such record alleged, but, in
5 order to convict the Defendant you are considering of a particular count, you must
6 unanimously agree upon at least one such record that you find that the particular
7 Defendant knowingly and willfully caused Madoff Securities to fail to make and
8 keep as required by law.

9
10 With respect to the charges in Counts Twelve, Thirteen and Fourteen,
11 you cannot return a guilty verdict as to any Defendant unless you find that the
12 Government has proven beyond a reasonable doubt that the Defendant you are
13 considering caused Madoff Securities to fail to make and keep at least one required
14 book or record after November 17, 2004. Your decisions as to whether the
15 particular book or record was not made and kept as required by law, and as to the
16 timing of the conduct, must be unanimous as to each individual Defendant.

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FALSE FILING WITH THE SEC – OVERVIEW:
(COUNT FIFTEEN)

Count Fifteen of the Indictment charges DANIEL BONVENTRE, the defendant, with aiding and abetting the filing of a false and misleading Madoff Securities FOCUS report with the SEC. I will explain the concept of “aiding and abetting” in more detail later.

Count Fifteen charges Defendant DANIEL BONVENTRE as follows:

[The Court reads Count Fifteen of the Indictment (Indictment ¶ 112).]

In order for DANIEL BONVENTRE to be found guilty **on this count**, the Government must prove each of the following three elements beyond a reasonable doubt:

First, that Madoff Securities was required by the Securities Exchange Act of 1934 to file the FOCUS report identified in Count Fifteen;

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1 Second, that an individual knowingly and willfully made, or caused to
2 be made, a materially false or misleading statement in the FOCUS report; and

3
4 Third, that DANIEL BONVENTRE aided and abetted the filing of
5 the materially false and misleading FOCUS report.

6
7 I have already defined the words “knowingly” “willfully,” and
8 “materially,” and you should apply those definitions here. The defense of good
9 faith, which I have discussed earlier, applies to this charge as well.

10
11
12 **BANK FRAUD OVERVIEW:**
13 **(COUNTS SEVENTEEN AND EIGHTEEN)**
14

15 Count Seventeen of the Indictment charges that the Defendant JO
16 ANN CRUPI committed bank fraud in connection with loans on behalf of David
17 Kugel, Craig Kugel, and Heather Kugel. Count Eighteen of the Indictment charges
18 that Defendant DANIEL BONVENTRE committed bank fraud in connection with
19 loans obtained for Madoff Securities.

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Count Seventeen charges Defendant JO ANN CRUPI as follows:

[The Court reads Count Seventeen of the Indictment (Indictment ¶ 119).]

Count Eighteen charges Defendant DANIEL BONVENTRE as follows:

[The Court reads Count Eighteen of the Indictment (Indictment ¶ 121).]

These counts charge violations of Title 18, United States Code, Section 1344, the federal bank fraud statute. In order to establish a particular Defendant's guilt of this crime, the Government must prove the following two elements:

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1 First, that the defendant engaged in a course of conduct concerning a
2 material matter that was designed to deceive a federally chartered or insured
3 financial institution into releasing property. A material matter is one that would
4 reasonably be expected to be of concern to a reasonable and prudent person in
5 relying upon the representation or statement in making a decision; and

6
7 Second, that the Defendant you are considering intended to victimize
8 the institution by exposing it to actual or potential loss.

9
10 In order to prove a particular Defendant or Defendants guilty of bank
11 fraud, the Government is not required to prove that the bank was actually injured
12 or even potentially injured by the Defendant's actions. The Government must,
13 however, prove that the Defendant intended that the bank would suffer actual or
14 potential injury. The Government must prove that the Defendant's conduct was
15 knowing and willful, as I have defined those terms for you earlier. **The defense of**
16 **good faith, which I have discussed earlier, applies to these charges as well.**

17
18
19 **FALSIFYING STATEMENTS IN RELATION TO DOCUMENTS**

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**~~REQUIRED BY ERISA:
(COUNT NINETEEN)~~**

~~Count Nineteen charges Defendant DANIEL BONVENTRE with
making false statements in a government filing in connection with the employment
of his son, Daniel M. Bonventre, at Madoff Securities.~~

~~Count Nineteen of the Indictment charges Defendant DANIEL
BONVENTRE as follows:~~

~~_____ [The Court reads Count Nineteen of the Indictment (Indictment ¶ 123).]~~

~~The Employee Retirement Income Security Act, or “ERISA,” is a law
which requires certain documents to be filed with the United States Department of
Labor. These documents include the records of a company’s employee welfare
benefit plans and employee pension benefit plans. Count Nineteen alleges a
violation of Title 18, Section 1027. The three elements of that offense are that:~~

~~_____ First, the defendant made, or knowingly caused to be made, a false
statement;~~

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~~Second, the falsification was knowing and willful; and~~

~~Third, that the statement was made in a document required by ERISA.~~

~~The terms “employee welfare benefit plan” and “welfare plan” mean any plan, fund, or program which is maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services. These terms also refer to any plan, fund or program which provides retirement income to employees or results in a deferral of income by employees for periods extending to the termination of covered employment or beyond.~~

~~An employee welfare benefit plan is subject to ERISA if it is established or maintained by an employer engaged in commerce or in any industry~~

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~~or activity affecting commerce, or by an employee organization or organizations
representing employees engaged in commerce or any industry or activity affecting
commerce, or by both such an employer and employee organization(s). The term
“commerce” means trade, traffic, commerce, transportation, or communication
between any State and any place outside thereof. The term “industry or activity
affecting commerce” means any activity, business, or industry in commerce or in
which a labor dispute would hinder or obstruct commerce or the free flow of
commerce.~~

~~Before you may convict DANIEL BONVENTRE on this count, you
must find beyond a reasonable doubt that the Madoff Securities benefit plan at
issue in this case was an employee welfare benefit plans subject to ERISA, that he
knew that the statement or statements in question were false, and that he knew they
would be reported to the Department of Labor in a document required to be filed
under ERISA.~~

AIDING AND ABETTING: WILLFULLY CAUSING A CRIME
(COUNTS SIX, SEVEN, EIGHT, NINE, TEN, ELEVEN, TWELVE,

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THIRTEEN, FOURTEEN, FIFTEEN, SEVENTEEN ~~AND, EIGHTEEN AND~~
NINETEEN

In Counts Six, Seven, Eight, Nine, Ten, Eleven, Twelve, Thirteen, Fourteen, Fifteen, Seventeen ~~and, Eighteen and Nineteen~~ (that is, all of the substantive charges except for the tax charges that I will discuss later), the Defendants are charged as aiders and abettors in addition to being charged as principals. Thus, the Government does not contend that the Defendants personally committed every physical act or crime charged in the Indictment. Instead, it contends that each Defendant charged performed certain acts and caused others to physically do certain acts.

Section 2(b) of the aiding and abetting statute, which makes it a crime to willfully cause another to commit a crime, reads as follows:

Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States [is punishable as a principal].

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1 What does the word “**principal**” mean here? It means a person who
2 physically commits the substantive crime that is charged.

3
4 What does the term “**willfully caused**” mean? It does not mean that
5 the Defendant himself need have physically committed the crime or supervised or
6 participated in the actual criminal conduct charged in the Indictment.

7
8 For purposes of your consideration of these Counts, the meaning of
9 the term “willfully caused” can be found in the answers to the following questions:

10
11 First, did the individual Defendant you are considering *intend* to
12 commit the substantive crime charged in the particular Count that you are
13 considering? As an example, if you are considering the Securities Fraud charge in
14 Count Six, you must determine whether the individual Defendant you are
15 considering intended that investors would be deceived by Madoff Securities
16 account documentation.

17
18 Second, did the individual Defendant you are considering

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1 intentionally cause another person to take the action described in the Count of the
2 Indictment that you are considering? Again using Count Six as an example only,
3 you must determine whether the individual Defendant you are considering
4 **intentionally** caused another person to issue false account documentation to
5 Madoff Securities investors.

6
7 You may not find that a Defendant aided and abetted a crime unless
8 you find that the Government has proven that another person took the action
9 resulting in the commission of the offense and that the Defendant you are
10 considering “willfully caused” the commission of the offense, as I have just
11 defined that term for you.

12
13 I will now turn to the remaining counts of the Indictment, which
14 charge tax-related crimes.

15
16
17 **SUBSCRIBING TO FALSE INDIVIDUAL TAX RETURN FOR THE TAX**
18 **YEARS 2003, 2004, 2006, 2007 - GENERAL:**
19 **(COUNTS TWENTY, TWENTY-ONE, TWENTY-TWO, AND TWENTY-**
20 **THREE)**

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1
2 Counts Twenty, Twenty-One, Twenty-Two and Twenty-Three each
3 charge Defendant DANIEL BONVENTRE with filing a false or fraudulent tax
4 return in the years 2003, 2004, 2006 and 2007, respectively, as specified in the
5 Indictment.

6
7
8 Count Twenty of the Indictment charges Defendant DANIEL
9 BONVENTRE as follows:

10
11 [The Court reads Count Twenty of the Indictment (Indictment ¶ 125).]
12
13

14 Count Twenty-One of the Indictment charges Defendant DANIEL
15 BONVENTRE as follows:

16
17 [The Court reads Count Twenty-One of the Indictment (Indictment ¶
18 127).]
19

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Count Twenty-Two of the Indictment charges Defendant DANIEL
BONVENTRE as follows:

[The Court reads Count Twenty-Two of the Indictment (Indictment ¶
129).]

Count Twenty-Three of the Indictment charges Defendant DANIEL
BONVENTRE as follows:

[The Court reads Count Twenty-Three of the Indictment (Indictment ¶
131).]

Counts Twenty to Twenty-Three of the Indictment allege that
DANIEL BONVENTRE violated Section 7206(1) of Title 26 of the United States
Code, which provides that:

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1 Any person who . . . [w]illfully makes and
2 subscribes any return, statement, or other
3 document, which contains or is verified by a written
4 declaration that it is made under the penalties of
5 perjury, and which he does not believe to be true
6 and correct as to every material matter [shall be
7 guilty of a crime.]
8

9 In the course of your deliberations concerning the determination of
10 whether any particular portion of the defendant's income was taxable, you should
11 consider income which may have been illegally acquired, as well as funds which
12 the evidence indicates have been lawfully acquired.
13

14 If you find from the evidence that the defendant received taxable
15 income and failed to report it as the law requires, it makes no difference in
16 determining the defendant's tax liability whether such income was lawfully or
17 unlawfully acquired.
18

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**SUBSCRIBING TO FALSE INDIVIDUAL TAX RETURN FOR THE TAX
YEARS 2003, 2004, 2006, 2007 - ELEMENTS OF THE OFFENSE:
(COUNTS TWENTY, TWENTY-ONE, TWENTY-TWO, AND TWENTY-
THREE)**

In order to prove the Defendant, Daniel Bonventre, guilty of filing a false or fraudulent tax return, the Government must prove each of the following four elements beyond a reasonable doubt:

First, that the Defendant made or caused to be made, a federal income tax return for the year in question which he verified to be true;

Second, that the tax return was false as to a material matter;

Third, that the Defendant signed the return willfully and knowing it was false; and

Fourth, that the return contained a written declaration that it was made under the penalty of perjury.

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1 The false statement in the return must be material. In this context,
2 “material” means that it must be essential to an accurate determination of the
3 defendant’s tax liability. The Government must also prove that the Defendant
4 knew that the statement was false as to that material matter. I have already defined
5 the terms “willfully,” and “knowingly,” and those definitions apply here. **The**
6 **defense of good faith, which I have discussed earlier, applies to these charges as**
7 **well.**

8
9 Thus, in order for the Government to prove willfulness, it must
10 establish beyond a reasonable doubt that the Defendant acted voluntarily and
11 intentionally, with the specific intent to violate the law by making a statement that
12 the Defendant knew was false, when it was the legal duty of the Defendant to
13 answer truthfully, and the defendant knew that it was his legal duty to answer
14 truthfully.

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OBSTRUCTING AND IMPEDING TAX LAW ADMINISTRATION -
GENERAL:
(COUNTS TWENTY-FOUR AND THIRTY)

Counts Twenty-Four and Thirty charge Defendants DANIEL
BONVENTRE and ANNETTE BONGIORNO, respectively, with corruptly
obstructing and impeding the due administration of the internal revenue laws. The
Indictment charges as follow:

Count Twenty-Four of the Indictment charges defendant DANIEL
BONVENTRE as follows:

[The Court reads Count Twenty-Four of the Indictment (Indictment ¶
133.)]

Count Thirty of the Indictment charges Defendant ANNETTE
BONGIORNO as follows:

[The Court reads Count Thirty of the Indictment (Indictment ¶ 137.)]

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1
2
3 The Indictment alleges that defendants DANIEL BONVENTRE and
4 ANNETTE BONGIORNO violated Section 7212(a) of Title 26 of the United
5 States Code, which provides, in pertinent part, that:

6
7 Whoever corruptly . . . obstructs or impedes, or
8 endeavors to obstruct or impede, the due
9 administration of [the internal revenue laws shall
10 be guilty of a crime].

11
12
13 **OBSTRUCTING AND IMPEDING TAX LAW ADMINISTRATION -**
14 **ELEMENTS OF THE OFFENSE:**
15 **(COUNTS TWENTY-FOUR AND THIRTY)**

16
17 In order to prove the Defendants DANIEL BONVENTRE and
18 ANNETTE BONGIORNO guilty of the crimes charged in Counts Twenty-Four
19 and Thirty, the Government must prove each of the two following elements beyond

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1 a reasonable doubt:

2
3 First, that the individual ~~D~~defendant you are considering acted
4 corruptly; and
5

6 Second, that the individual ~~D~~defendant you are considering acted with
7 the intent to impede or obstruct the due administration of federal tax laws.
8

9 To act corruptly simply means to act with the intent to secure an
10 unlawful advantage or benefit either for oneself or for another. The due
11 administration of the internal revenue laws refers to the uncorrupted and
12 unimpeded collection of taxes by the federal government.
13

14 Because there is a limit on how much time the Government has to
15 obtain an indictment, you cannot return a verdict of guilty on Count Twenty-Four
16 or on Count Thirty unless you find that the Government has proven, beyond a
17 reasonable doubt, that the Defendant you are considering committed an act after
18 October 1, 2006, that was designed to corruptly obstruct the IRS. Your findings as

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to the particular act committed and as to the time frame must be unanimous.

TAX EVASION- GENERAL:
(COUNTS TWENTY-FIVE TO TWENTY-NINE AND THIRTY TO
THIRTY-THREE)

In Counts Twenty-Five through Twenty-Nine, the Indictment charges
Defendant ANNETTE BONGIORNO with evasion of income tax. In Counts
Thirty-One through Thirty-Three, the Indictment charges Defendant JO ANN
CRUPI with evasion of income tax.

The Indictment charges as follows:

Counts Twenty-Five through Twenty-Nine charge Defendant
ANNETTE BONGIORNO as follows:

[The Court reads Counts Twenty-Five through Twenty-Nine of the
Indictment (Indictment ¶ 135).]

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1 Count Twenty-Five of the Indictment charges that, for the 2004 tax
2 year, Defendant ANNETTE BONGIORNO falsely reported on her tax return that
3 her taxable income was \$96,943 when her approximate actual taxable income was
4 \$185,008 and that the approximate additional income tax due and owing was \$27,
5 425.

6
7
8 Count Twenty-Six of the Indictment charges that, for the 2005 tax
9 year, Defendant ANNETTE BONGIORNO falsely reported on her tax return that
10 her taxable income was \$59,470 when her approximate actual taxable income was
11 \$122,403 and that the approximate additional income tax due and owing was
12 \$18,616.

13
14
15 Count Twenty-Seven of the Indictment charges that, for the 2006 tax
16 year, Defendant ANNETTE BONGIORNO falsely reported on her tax return that
17 her taxable income was \$54,792 when her approximate actual taxable income was
18 \$122,112 and that the approximate additional income tax due and owing was
19 \$20,201.

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1
2 Count Twenty-Eight of the Indictment charges that, for the 2007 tax
3 year, Defendant ANNETTE BONGIORNO falsely reported on her tax return that
4 her taxable income was \$579,085 when her approximate actual taxable income was
5 \$640,606 and that the approximate additional income tax due and owing was
6 \$17,220.

7
8
9 Count Twenty-Nine of the Indictment charges that, for the 2007 tax
10 year, Defendant ANNETTE BONGIORNO falsely reported on her tax return that
11 her taxable income was \$65,467 when her approximate actual taxable income was
12 \$116,977 and that the approximate additional income tax due and owing was
13 \$17,220.

14
15
16 Counts Thirty-One through Thirty-Three charge Defendant JO ANN
17 CRUPI as follows:

18
19 [The Court reads Count Thirty-One through Thirty-Three of the

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1 Indictment (Indictment ¶ 139).]

2
3
4 Count Thirty-One of the Indictment charges that, for the 2004 tax
5 year, Defendant JO ANN CRUPI falsely reported on her tax return that her taxable
6 income was \$104,418 when her approximate actual taxable income was \$170,290
7 and that the approximate additional income tax due and owing was \$13,341.

8
9
10 Count Thirty-Two of the Indictment charges that, for the 2007 tax
11 year, Defendant JO ANN CRUPI falsely reported on her tax return that her taxable
12 income was \$0 when her approximate actual taxable income was \$34,700 and that
13 the approximate additional income tax due and owing was \$7,955.

14
15 Count Thirty-Three of the Indictment charges that, for the 2008 tax
16 year, Defendant JO ANN CRUPI falsely reported on her tax return that her taxable
17 income was \$2,534,045 when her approximate actual taxable income was
18 \$2,589,665 and that the approximate additional income tax due and owing was
19 \$19,467.

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The Indictment alleges that the Defendants ANNETTE BONGIORNO AND JO ANN CRUPI violated Section 7201 of Title 26 of the United States Code, which provides, in pertinent part, that:

Any person who willfully attempts in any manner to evade or defeat any tax imposed by [the Internal Revenue Code shall be guilty of a crime].

TAX EVASION -
ELEMENTS:
(COUNTS TWENTY-FIVE TO TWENTY-NINE AND THIRTY TO THIRTY-THREE)

In order to prove the crime of tax evasion, the Government must establish beyond a reasonable doubt each of the following three elements:

First, that the individual Defendant you are considering owed substantially more federal income tax for the calendar year specified in the charge

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1 than was declared due on her income tax return;

2
3 Second, that the individual Defendant you are considering committed
4 the affirmative act constituting tax evasion that is described in the relevant Count
5 of the Indictment; and

6
7 Third, that the individual Defendant you are considering acted
8 willfully.

9
10
11 **TAX EVASION FIRST ELEMENT -**
12 **TAX DUE:**
13 **(COUNTS TWENTY-FIVE TO TWENTY-NINE AND THIRTY TO**
14 **THIRTY-THREE)**
15

16 The first element of the tax evasion offense which the Government
17 must prove is that the Defendant you are considering owed substantially more
18 federal income tax for the specified calendar year than **the** tax declared on her
19 income tax return.

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1 The Government does not have to prove the exact amount the
2 ~~D~~defendant owes. Nor does the Government have to prove that all of the tax
3 charged in the Indictment was evaded.
4
5
6

7 **TAX EVASION SECOND ELEMENT -**
8 **AFFIRMATIVE ACT CONSTITUTING EVASION:**
9 **(COUNTS TWENTY-FIVE TO TWENTY-NINE AND THIRTY TO**
10 **THIRTY-THREE)**
11

12 The second element of the tax evasion offense which the Government
13 must prove is that the individual Defendant you are considering committed the
14 affirmative act constituting tax evasion described in the relevant Count of the
15 Indictment.
16

17 The Internal Revenue Code makes it a crime to attempt, in any
18 manner, to evade or defeat any income tax imposed by law.
19

20 There are many different ways in which a tax may be evaded, or an

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attempt may be made to evade it. In this case, the Indictment alleges that the Defendants engaged in the specific activities I referenced when reading these Counts of the Indictment.

TAX EVASION THIRD ELEMENT -
WILLFULNESS:
(COUNTS TWENTY-FIVE TO TWENTY-NINE AND THIRTY TO
THIRTY-THREE)

The third element of the tax evasion offense which the Government must prove is that the individual Defendant you are considering acted knowingly and willfully.

To satisfy this element, the Government must prove beyond a reasonable doubt that the Defendant knew that she owed substantially more federal income tax for the specified calendar year than was declared on her income tax return. Whether or not the Defendant had this knowledge is a question of fact to be determined by you on the basis of all of the evidence. Of course, an act is done

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1 knowingly only if it is done purposely and deliberately and not because of mistake,
2 accident, negligence, actual belief that the amounts received were not taxable
3 income or other innocent reason. Simply filing a tax return that might be incorrect
4 or incomplete, is not by itself a crime.

5
6 In this regard, I instruct you that the Internal Revenue Code provides
7 that the fact that an individual's name is signed to a return is evidence that the
8 return was actually signed by that person. In other words, unless there is evidence
9 in the case which leads you to conclude otherwise, you may find that a tax return
10 was in fact signed by the person whose name appears to be signed on it. If the
11 evidence leads you to conclude, beyond a reasonable doubt, that the individual
12 Defendant you are considering signed her tax return, you may, but are not required
13 to, draw the inference that the individual Defendant you are considering had
14 knowledge of the contents of the return.

15
16
17 **TAX EVASION - UNLAWFULLY RECEIVED INCOME:**
18 **(COUNTS TWENTY-FIVE TO TWENTY-NINE AND THIRTY TO**
19 **THIRTY-THREE)**
20

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1 In the course of your deliberations concerning the determination of
2 whether any particular portion of the defendant's income was taxable, you should
3 consider income which may have been illegally acquired, as well as funds which
4 the evidence indicates have been lawfully acquired.

5
6 If you find from the evidence that the individual Defendant you are
7 considering received taxable income and failed to report it as the law requires, it
8 makes no difference in determining the Defendant's tax liability whether such
9 income was lawfully or unlawfully acquired.

10
11
12 **CONSCIOUS AVOIDANCE**

13 As I have explained, each Count charged in the Indictment requires
14 the Government to prove beyond a reasonable doubt that each individual
15 Defendant that you are considering acted "knowingly," because he or she had
16 knowledge of particular material facts. In determining whether a Defendant acted
17 knowingly, you may consider whether he or she deliberately closed his or her eyes
18 to what would otherwise have been obvious to him or her, and acted with

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1 deliberate disregard of the facts. However, I caution you that the Government
2 cannot prove a Defendant's knowledge of a particular fact merely by showing that
3 the Defendant was careless, foolish, negligent, inattentive or reckless. To find
4 knowledge on this basis, it is not sufficient that the particular Defendant may not
5 have tried hard enough to learn the truth.

6
7 Thus, if you find there is proof beyond a reasonable doubt that the
8 Defendant you are considering was aware of a high probability of a material fact's
9 existence, and that he or she consciously and deliberately took action to avoid
10 learning the truth of that fact, you may find that the Defendant had knowledge of
11 that material fact. However, if the Defendant actually believed that a particular
12 material fact did not exist, then you may not conclude that he or she acted
13 knowingly, and you must acquit.

14
15 It is entirely up to you, as the judges of the facts, to determine whether
16 the Defendant deliberately closed his or her eyes and any inferences to be drawn
17 from the evidence on this issue. Lastly, in the context of a conspiracy, if you find
18 that a conspiracy existed, before you may convict any Defendant you must find

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1 that the particular Defendant you are considering knew there was an illegal
2 conspiracy and that he or she intentionally joined it. You may not apply the
3 principle of conscious avoidance as I have defined it to decide whether or not the
4 Defendant you are considering intentionally joined a conspiracy. You may,
5 however, find that the Defendant joined the conspiracy even if he or she did not
6 actually know the details of the conspiracy's aims or unlawful objectives, if you
7 find that the Defendant consciously and deliberately avoided knowing the truth
8 about the conspiracy's aims and objectives.

9
10
VENUE

11
12 In addition to the elements I have described for you, you must decide
13 whether the alleged criminal acts in this case occurred within the Southern District
14 of New York. The Government has offered evidence that some of the events
15 occurred in Manhattan. I instruct you that Manhattan, the Bronx and Westchester
16 County are all in the Southern District of New York.

17
18 I should note that on this issue – and this issue alone – the

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1 Government need not prove venue beyond a reasonable doubt, but only by a mere
2 preponderance of the evidence. Thus, the Government has satisfied its venue
3 obligations if you conclude that it is more likely than not that the activity at issue
4 occurred in the Southern District of New York. If you find that the Government
5 has failed to prove this venue requirement, then you must acquit the defendant you
6 are considering of this charge.

7
8
9
10
11 **VARIANCE IN DATES**

12 It does not matter if the Indictment alleges that a specific transaction
13 or event occurred on or about a certain date or month and the testimony indicates
14 that in fact it was a different date or month. The law requires only a substantial
15 similarity between the dates and months alleged in the Indictment and the dates
16 and months established by the evidence.

17
18
19 **CONCLUSION OF INSTRUCTIONS**

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1 This completes my instructions of the law.

2 *****

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**SELECTION OF THE FOREPERSON, RIGHT TO SEE EXHIBITS AND
REVIEW TESTIMONY; COMMUNICATIONS WITH THE COURT**

Now, for some general instructions that will guide you in your deliberations. You will shortly retire to the jury room to begin your deliberations. When you retire to the jury room, you must have a foreperson. That person will preside over the deliberations and speak for you here in open court. Other than those functions, the foreperson will have no greater nor lesser authority than any other juror.

It is my custom to select the foreperson of the jury. Accordingly, I am now selecting juror number [____] as your foreperson.

When you retire to the jury room to deliberate, you will be provided with a list of the exhibits that have been admitted into evidence. You may request to see any of the exhibits. You may also request to review any of the testimony. Please remember that it is not always easy to locate what you might want, so be as specific as you possibly can in your requests.

I remind you that any notes you may have taken during trial are

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1 simply an aid to your personal memory. They are not to be shared. Because the
2 notes may be inaccurate or incomplete, they may not be given any greater weight
3 or influence than the recollections of other jurors about the facts or the conclusions
4 to be drawn from the facts in determining the outcome of the case. Any difference
5 between a juror's recollection and a juror's notes should always be settled by asking
6 to review the court reporter's transcript on that point. You must base your
7 determination of the facts and, ultimately, your verdict, on the court record rather
8 than on your notes.

9
10 During your deliberations, you must not communicate by any means
11 with or provide any information about this case, or anything or anyone having to
12 do with it, to anyone who is not part of the 12-member deliberating jury. You may
13 not communicate with outsiders directly, in writing or by using any electronic
14 device or media, such as a telephone, cell phone, smart phone, iPhone, or
15 computer; the internet, any internet service, or any text or instant messaging; or
16 any internet chat room, blog, website or social networking platform such as
17 Facebook, LinkedIn, YouTube, or Twitter, to communicate to anyone any
18 information about this case or to conduct any research about this case until I accept

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1 your verdict. You must continue to refrain from receiving any outside information
2 about this case.

3
4 Each of your requests, and any communication with the Court,
5 should be made to me in writing, initialed by your foreperson, and given to the
6 U.S. Marshal, who will be available outside the jury room throughout your
7 deliberations. After consulting with counsel, I will respond to any question or
8 request you have as promptly as possible, either in writing or by having you return
9 to the courtroom so that I can speak with you in person.

10
11
12 **DUTY TO DELIBERATE AND NEED FOR UNANIMITY**

13 The Government, to prevail as to each individual Defendant with
14 respect to each Count of the Indictment, must prove the essential elements of the
15 crime charged beyond a reasonable doubt, as I have already explained in these
16 instructions. If the Government succeeds, your verdict should be guilty; if the
17 Government fails, your verdict should be not guilty.

18
19 To report a verdict, your decision must be unanimous.

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1 Your function is to weigh the evidence in the case and determine
2 whether or not the Defendant you are considering is guilty, as to each crime with
3 which that Defendant is charged in the Indictment, solely upon the basis of such
4 evidence.

5
6 Each of you must decide the case for yourself, after consideration,
7 with your fellow jurors, of the evidence of the case. You should not hesitate to
8 change an opinion when convinced that it is erroneous. However, you are not
9 bound to surrender your honest convictions concerning the effect or weight of the
10 evidence for the mere purpose of returning a verdict or solely because of the
11 opinion of other jurors. Discuss and weigh your respective opinions
12 dispassionately, without regard to sympathy, without regard to prejudice or favor
13 for either party, and adopt that conclusion which in your good conscience appears
14 to be in accordance with the truth.

15
16 Again, each of you must make his or her own decision about the
17 proper outcome of this case based on your consideration of the evidence and your
18 discussions with your fellow jurors. In short, your verdict as to each charge and

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1 each Defendant, whether you find a Defendant guilty or not guilty, must reflect
2 your conscientious decision as to how the issues should be decided. And your
3 decision must be unanimous. That is, in order to return a verdict, it is necessary
4 that each juror agree to it.

5
6 After you have reached a verdict, your foreperson completes and
7 signs the verdict form and will advise the Marshal outside your door that you have
8 reached a verdict and are ready to return to the courtroom.

9
10 If you are divided, do not report how the vote stands, and if you have
11 reached a verdict do not report what it is until you are asked in open court.

12
13 Please remain silent, in your seats, while I confer briefly with
14 counsel.

15
16 **[SIDEBAR RE: ANY OBJECTIONS TO CHARGE]**

17
18 At this time I will thank, and excuse from deliberations for now, the

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1 [six] alternate jurors. All of us in this courtroom are grateful for your faithful and
2 attentive participation in these proceedings. Even though you are being excused
3 from deliberating for now, you may be called to join the deliberations if that
4 becomes necessary in the future. Accordingly, I am not releasing you from your
5 oath as jurors or from your obligations of confidentiality at this time. You must
6 continue to follow my instructions to keep your views to yourself, to steer clear of
7 all outside information and views about the case, and not to discuss the case, or
8 anyone or anything having to do with it, in any way, with any one at all.

9
10 Please give Ms. Ng telephone numbers at which you can be reached,
11 and be prepared to return to the courthouse on two hours' notice if called to do so.
12 If you are not recalled during the deliberations, Ms. Ng will notify you after the
13 deliberations have ended. Jurors [____], thank you. Please accompany Ms. Ng
14 to the jury room to gather your belongings and let her verify your contact
15 information.

16
17 We will all remain here quietly, in our seats, until Ms. Ng returns.
18

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1 The Marshal will now be sworn and you will retire to the jury room
2 to begin your deliberations. You must only deliberate when all 12 of you are
3 present in the room. You may deliberate today until _____ p.m., and tomorrow
4 and each succeeding week-day as necessary. You must not discuss the case, or
5 anything or anyone having anything to do with it, in any way, outside the jury
6 room, when fewer than all 12 of you are present, or with anyone who is not a
7 member of this 12 member jury. You may not do any outside research or consult
8 any outside sources, electronic or otherwise. Leave all notes, exhibits and case
9 related material in the jury room at all times. The Marshal will bring you back to
10 the courtroom for dismissal.

11
12 [Deputy Clerk swears Marshal in.]

13
14 Mr. Marshal, please escort the jury to the jury room.
15